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13 BEFORE THE INSURANCE COMMISSIONER  
14 OF THE STATE OF CALIFORNIA

15 In the Matter of the Rate Applications of

16 21st Century Insurance Company and  
17 21st Century Casualty Company,

18 Applicants.

19 File Nos.: 24-496, 24-496-A

20 **CONSUMER WATCHDOG'S**  
21 **PETITION FOR HEARING,**  
22 **PETITION TO INTERVENE, AND**  
23 **NOTICE OF INTENT TO SEEK**  
24 **COMPENSATION**

25 [Ins. Code §§ 1861.05 and 1861.10; Cal.  
26 Code Regs, tit. 10, §§ 2653.1, 2661.2  
27 and 2661.3]

1 Consumer Watchdog hereby requests that the Insurance Commissioner notice a public  
2 hearing pursuant to Insurance Code sections 1861.05, subdivisions (a) and (c), and 1861.10,  
3 subdivision (a), on the issues raised in this petition regarding the above-referenced Rate,  
4 Applications of 21st Century Insurance Company and 21st Century Casualty Company (“21st  
5 Century” or “Applicants”), at which time Applicants will be directed to appear and respond to  
6 the issues raised in this petition. Consumer Watchdog also hereby requests that it be granted  
7 leave to intervene in the proceeding on the Applications. Consumer Watchdog intends to seek  
8 compensation in this proceeding, and, pursuant to California Code of Regulations, title 10 (“10  
9 CCR”), section 2661.3 subdivision (c), Consumer Watchdog’s proposed budget is attached  
10 hereto as Exhibit A.

11 In support of its petition, Consumer Watchdog alleges:

12 **I. THE APPLICATIONS**

13 1. On or about February 29, 2024, Applicants filed Rate Applications with the  
14 California Department of Insurance (“CDI”), seeking approval of an overall +18.4% rate  
15 (\$85 million) rate increase (File Nos. 24-496, 24-496-A [“the Applications”]) to their prior  
16 passenger auto (“PPA”) line of insurance. This request follows an approved 6.9% (\$29 million)  
17 overall PPA rate increase effective January 23, 2024. (File Nos. 23-1302, 23-1302-A.)

18 2. On or about March 15, 2024, the public was notified by the CDI of the  
19 Applications.

20 **II. PETITIONER**

21 3. Petitioner Consumer Watchdog is a nonprofit, nonpartisan public interest  
22 corporation organized to represent the interests of consumers and taxpayers. A core focus of  
23 Consumer Watchdog’s advocacy is the representation of the interests of insurance consumers  
24 and policyholders, particularly as they relate to the implementation and enforcement of  
25 Proposition 103, in matters before the Legislature, the courts, and the CDI.

26 4. Consumer Watchdog’s founder authored Proposition 103 and led the successful  
27 campaign for its enactment by California voters in 1988. Consumer Watchdog’s staff and  
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1 consultants include some of the nation’s foremost consumer advocates and experts on insurance  
2 ratemaking matters.

3 5. Consumer Watchdog has served as a public watchdog with regard to insurance  
4 rates and insurer rollback liabilities under Proposition 103 by: monitoring rollback settlements  
5 and the status of the rollback regulations; reviewing and challenging rate filings made by insurers  
6 seeking excessive rates; participating in rulemaking and adjudicatory hearings before the CDI;  
7 and educating the public concerning industry underwriting and rating practices, their rights under  
8 Proposition 103, and other provisions of state law. Consumer Watchdog has also initiated and  
9 intervened in actions in state court and appeared as amicus curiae in matters involving the  
10 interpretation and application of Proposition 103 and the Insurance Code.<sup>1</sup>

11 6. Consumer Watchdog has initiated and intervened in numerous proceedings before  
12 the CDI related to the implementation and enforcement of Proposition 103’s reforms, including  
13 over 150 such proceedings in the last twenty years. In every proceeding that has resulted in a  
14 final decision and in which Consumer Watchdog sought compensation from 2003–2022, the  
15 Commissioner found that Consumer Watchdog made a substantial contribution, meaning that its  
16 participation was separate and distinct from any other party and that it presented relevant issues,  
17 evidence, and arguments that resulted in more credible, non-frivolous information being  
18 available to the Commissioner in making his final decision.

19 **III. ISSUES AND EVIDENCE TO BE PRESENTED AND POSITIONS OF PETITIONER**

20 7. In the rate proceeding initiated by Consumer Watchdog’s petition, Consumer  
21 Watchdog will present and elicit evidence to show that the rates proposed in the Applications are  
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23  
24 <sup>1</sup> For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v.*  
25 *Garamendi* (1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243;  
26 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473; *Spanish*  
27 *Speaking Citizens’ Found. v. Low* (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Ins. Co.*  
28 *(2004) 116 Cal.App.4th 968; State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th  
1029; *The Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th  
1354; *Ass’n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029; *Mercury Cas. Co. v.*  
*Jones* (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State*  
*Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

1 excessive and/or unfairly discriminatory in violation of Insurance Code section 1861.05,  
2 subdivision (a), which provides that “[n]o rate shall be approved or remain in effect which is  
3 excessive, inadequate, [or] unfairly discriminatory.” Additionally, Consumer Watchdog will  
4 present and elicit evidence that Applicants’ proposed rates violate 10 CCR § 2644.1, which  
5 provides that “[n]o rate shall be approved or remain in effect that is above the maximum  
6 permitted earned premium as defined in section 2644.2.”

7 8. Based on Consumer Watchdog’s preliminary analysis in consultation with its  
8 actuarial expert and the information contained in the Applications, Consumer Watchdog has  
9 identified the following issues with the Applications on which it intends to present and elicit  
10 evidence as set forth in (a)–(c) below. Each of these issues is directly relevant to determining  
11 whether Applicants’ proposed rate increase is excessive under Insurance Code section  
12 1861.05(a). Consumer Watchdog intends to request further information on these issues through  
13 informal/formal discovery from the Applicants and reserves the right to develop and refine its  
14 positions as more information is made available.

15 a) Loss and Premium Trends (10 CCR § 2644.7): Consumer Watchdog’s current  
16 position, to the extent now known, is that Applicants’ frequency and severity trend  
17 selections result in excessive net trends which overstate the projected losses, causing  
18 an inflated rate indication. Consumer Watchdog’s preliminary analyses indicate a  
19 much lower rate need, particularly for Bodily Injury, Collision, and Medical  
20 Payments. The selected 12-point frequency and severity trends for these coverages  
21 give too much weight to the volatile recent experience, which cannot be expected to  
22 continue indefinitely.

23 21st Century states in the Filing Memorandum that “[a] 12-point trend period has  
24 been selected for both premium and loss trend for all coverages. This provides the  
25 balance between responsiveness and stability and is consistent with past filings.” This  
26 boilerplate language offers nothing substantive in terms of support for the selected  
27 trend factors. Consumer Watchdog’s preliminary analysis shows that lower trend  
28 factors, reflecting the latest data but also incorporating additional experience prior to

1 the most recent few quarters, are more reasonable and actuarially sound. This analysis  
2 produces an overall rate indication that is substantially lower than the 18.4% rate  
3 increase proposed by 21st Century. Based on these findings, Applicants do not fully  
4 support the assertion that the selected trend factors are the most actuarially sound.

- 5 b) Improper Loss Development (10 CCR § 2644.6): Applicants have used the combined  
6 loss & DCCE development method in this filing (both incurred and paid, depending  
7 on the coverage). Given that pure loss develops quite differently from DCCE for this  
8 book of business (e.g., 12-Ult LDF of 2.278 for incurred BI pure loss and 12.432 for  
9 incurred BI DCCE), the development patterns should be analyzed separately to  
10 properly estimate the ultimate values. Applicants have failed to justify the use of  
11 combined Loss and DCCE in their analysis of development patterns.

12 Further, Applicants use incurred loss development for Bodily Injury, UMBI, and  
13 Medical Payments, stating in the Filing Memorandum that “[t]he incurred triangles  
14 are the most appropriate since they incorporate additional information through claim  
15 reserves and reduce dependency on tail factors.” For the Bodily Injury coverage,  
16 incurred development is materially higher than paid development, with the developed  
17 incurred losses being more than 20% higher than the developed paid losses for the  
18 most recent year. Applicants fail to explain why there is such a large difference  
19 between the paid and incurred development. Nor do Applicants demonstrate that the  
20 much higher incurred development method is the most actuarially sound.

- 21 c) Improper / Unsupported Excluded Expenses (10 CCR § 2644.10): Applicants have  
22 not shown that the sum of the institutional advertising expenses listed on page 4.1 of  
23 the Prior Approval Rate Template, \$196,623,081, is appropriate. Consumer  
24 Watchdog’s current position, to the extent now known, is that Applicants have failed  
25 to provide sufficient information in the filing to support their claim that 28.7% of  
26 advertising expenses over the last three years have been institutional. Per the  
27 regulation: “‘Institutional advertising’ means advertising not aimed at obtaining  
28 business for a specific insurer and not providing consumers with information

1           pertinent to the decision whether to buy the insurer’s product.” Based on the  
2           information currently available in the Applications, and subject to review of  
3           additional information that may be obtained from Applicants during the proceeding  
4           through formal or informal discovery on these and other excluded expenses items, it  
5           is Consumer Watchdog’s position that Applicants have not proven that their excluded  
6           expense ratio of 0.3% shown on page 4.2 of the Prior Approval Rate Template is  
7           appropriate. Applicants have not provided examples of non-institutional advertising  
8           in accordance with the above-referenced regulation and with the CDI’s Prior  
9           Approval Rate Filing Instructions. Consumer Watchdog reserves the right to seek  
10          discovery and raise additional issues regarding the accuracy of the amounts listed in  
11          page 4.2 of the Prior Approval Rate Template for other categories of excluded  
12          expenses that should be reflected in the rate calculation but may not be adequately  
13          reflected in the filing, including political contribution and lobbying expenses,  
14          excessive executive compensation, bad faith judgments and associated DCCE, costs  
15          of unsuccessful defense of discrimination claims, and fines and penalties.

16           9.       This petition is based upon Consumer Watchdog’s preliminary analysis of the  
17          Applications. Thus, Consumer Watchdog reserves the right to modify, withdraw, and/or add  
18          issues for consideration as more information becomes available, including but not limited to  
19          violations of Insurance Code section 1859 if it is discovered during the course of the proceeding  
20          that Applicants have willfully withheld information from, or knowingly given false or  
21          misleading information to, the Commissioner or to any rating organization, advisory  
22          organization, insurer or group, association or other organization of insurers that will affect its  
23          rates, rating systems, or premiums that are the subject of this filing.

24          **IV. AUTHORITY FOR PETITION AND GRANTING REQUEST FOR A HEARING**

25           10.       The authority for this petition for hearing is Insurance Code section 1861.10,  
26          subdivision (a), which grants “any person” the right to initiate or intervene in a proceeding  
27          permitted or established by Proposition 103 and the right to enforce Proposition 103.

1 Specifically, as stated above, Consumer Watchdog initiates this proceeding to enforce Insurance  
2 Code section 1861.05 and the Commissioner’s regulations.

3 11. Additionally, a hearing is authorized pursuant to Insurance Code section 1861.05,  
4 subdivision (c), which allows “a consumer or his or her representative” to request a hearing on a  
5 rate application and 10 CCR § 2653.1, which provides that “any person, whether as an  
6 individual, representative of an organization, or on behalf of the general public, may request a  
7 hearing by submitting a petition for hearing.”

8 12. This petition is timely pursuant to Insurance Code section 1861.05, subdivision  
9 (c), and 10 CCR § 2646.4(a)(1) because it is filed within forty-five (45) days of the March 15,  
10 2024 public notice date.

11 **V. INTEREST OF PETITIONER**

12 13. Consumer Watchdog’s interest in the above-captioned proceeding is to ensure that  
13 Applicants’ automobile insurance policyholders are charged rates and premiums that comply  
14 with the provisions of Insurance Code section 1861.05(a)’s requirement that “no rate shall be  
15 approved or remain in effect which is excessive, inadequate, [or] unfairly discriminatory or  
16 otherwise in violation of this chapter,” and the requirements contained in the regulations  
17 promulgated thereunder. Pursuant to state law, drivers are required to purchase automobile  
18 insurance. Consumers who are overcharged by insurers for this insurance coverage are part of  
19 Consumer Watchdog’s core constituency. The specific issues and positions to be taken by  
20 Consumer Watchdog in this proceeding, to the extent known at this time, are set forth in  
21 paragraphs 8(a)–(c) *supra*.

22 14. As noted in paragraphs 3–6 *supra*, Consumer Watchdog’s staff and consultants  
23 have substantial experience and expertise in insurance rate matters, which Consumer Watchdog  
24 believes will aid the CDI in its review of the Applications and aid the Commissioner in making  
25 his ultimate decision as to whether to approve or disapprove the requested rate. As noted in  
26 paragraph 6 above, the Commissioner has found that Consumer Watchdog has made a  
27 substantial contribution to his decisions in every rate proceeding that has resulted in a final  
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1 decision and in which Consumer Watchdog sought compensation from 2003–2022. If leave to  
2 intervene is granted, Consumer Watchdog will participate fully in all aspects of this proceeding.

3 15. Consumer Watchdog also has an interest in ensuring that Applicants, the CDI, and  
4 the Insurance Commissioner comply with the laws enacted by the voters under Proposition 103,  
5 and the rules and regulations that implement those laws, including that all information submitted  
6 to the CDI in connection with the Applications is made publicly available.

7 **VI. AUTHORITY FOR PETITION TO INTERVENE**

8 16. The authority for Consumer Watchdog’s petition to intervene is Insurance Code  
9 section 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in  
10 any proceeding permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division  
11 1 of the Insurance Code] . . . and enforce any provision of this article.” This proceeding is a  
12 proceeding to enforce Insurance Code section 1861.05 pursuant to Insurance Code section  
13 1861.10(a), and hence is a proceeding both “permitted” and “established” by Chapter 9. Per the  
14 voters’ instruction, the mandatory right to intervene under section 1861.10(a), like all the  
15 provisions of Proposition 103, must be “liberally construed and applied in order to fully promote  
16 its underlying purposes.” (Prop. 103, § 8.) Thus, section 1861.10 must be interpreted and applied  
17 broadly in a manner to fully encourage consumer participation. (*Ibid.*; see also *Ass’n of*  
18 *California Ins. Cos. v. Poizner, supra*, 180 Cal.App.4th at 1052 [stating “the goal of fostering  
19 consumer participation in the administrative rate-setting process” as “one of the purposes of  
20 Proposition 103”].) The broad intervention standard enacted by section 1861.10 ensures that  
21 consumers will be able to participate in proceedings *independently of the CDI staff* who may take  
22 different positions or emphasize different issues in the proceeding, and with all rights accorded  
23 to any other party, including the right to raise additional issues and/or violations as they become  
24 known during the course of the proceeding through informal or formal discovery.

25 17. This petition to intervene is also authorized by 10 CCR § 2661.1 et seq. In  
26 compliance with 10 CCR § 2661.3, the specific issues to be raised and positions to be taken by  
27 Consumer Watchdog, *to the extent known at this time*, are set forth in paragraph 8, *supra*. Each  
28 of these issues relate directly to specific standards and requirements under the ratemaking

1 formula at 10 CCR § 2644.1 et seq. and thus are directly relevant to ultimately determining  
2 whether Applicants' requested rate is excessive or otherwise unjustified. Although consumer  
3 presence in departmental proceedings typically results in significant reductions to policyholders'  
4 rates, the amount of savings for each individual consumer is outweighed by the time and expense  
5 of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an  
6 independent organization like Consumer Watchdog introduces a voice that otherwise would be  
7 absent from this proceeding.

#### 8 **VII. PARTICIPATION OF CONSUMER WATCHDOG**

9 18. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3, that it will be  
10 able to attend and participate in this proceeding without unreasonably delaying this proceeding  
11 or any other proceedings before the Insurance Commissioner.

#### 12 **VIII. INTENT TO SEEK COMPENSATION**

13 19. The Commissioner has awarded Consumer Watchdog compensation for its  
14 reasonable advocacy and witness fees and expenses in past departmental proceedings. The  
15 Commissioner issued Consumer Watchdog's latest Finding of Eligibility on July 26, 2022,  
16 effective for two years as of July 12, 2022. Consumer Watchdog was previously found eligible to  
17 seek compensation on August 25, 2020, effective as of July 12, 2020; July 12, 2018; July 14,  
18 2016; July 24, 2014; July 24, 2012; July 2, 2010; August 25, 2008; July 14, 2006; July 2, 2004;  
19 June 20, 2002; October 1, 1997; September 26, 1995; September 27, 1994; and September 13,  
20 1993.

21 20. Consumer Watchdog intends to seek compensation in this proceeding. Pursuant to  
22 10 CCR § 2661.3(c), Consumer Watchdog's estimated budget in this proceeding is attached  
23 hereto as Exhibit A. Consumer Watchdog has based its estimated budget on several factors  
24 including: (1) the technical and legal expertise needed to address these issues; (2) its current best  
25 estimate of the time needed to participate effectively in these proceedings, taking into account  
26 the time already expended by Consumer Watchdog's legal and actuarial staff and an estimate of  
27 time needed to complete remaining tasks through completion of a noticed evidentiary hearing;  
28 and (3) past experience in similar rate proceedings before the CDI. The estimated budget is

1 reasonable and the staffing level is appropriate, given the expertise that Consumer Watchdog and  
2 its consultants bring to these proceedings when the issues involved are issues at the very core of  
3 its organizational mission and strike at the very heart of Proposition 103 itself. The budget  
4 presented in the attached Exhibit A is a preliminary estimate, and Consumer Watchdog reserves  
5 the right to amend its proposed budget as its expenses become more certain, or in its request for  
6 final compensation. Consumer Watchdog will give notice of such modifications as soon as  
7 practicable after it discovers the need to revise its estimates and shall comply with the budget  
8 revision requirements in the relevant intervenor regulations.

9 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance  
10 Commissioner GRANT its petition for hearing and petition to intervene in the proceeding,  
11 having all rights and responsibilities accorded any other party to the proceeding.

12  
13 DATED: April 29, 2024

Respectfully submitted,  
Harvey Rosenfield  
Pamela Pressley  
Benjamin Powell  
CONSUMER WATCHDOG

14  
15  
16  
17 By: \_\_\_\_\_

  
Benjamin Powell  
Attorneys for CONSUMER WATCHDOG



**EXHIBIT A  
PRELIMINARY BUDGET**

**ITEMS**

**ESTIMATED COST**

1. Consumer Watchdog Attorneys and Paralegal

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours ..... \$59,500

- Draft and edit petition for hearing and petition to intervene; supervise Consumer Watchdog counsel; oversee preparation of motions, briefing; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicants’ counsel; assist in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing.

Benjamin Powell (Staff Attorney) @ \$350 per hour, 200 hours ..... \$70,000

- Confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with CDI and Applicants’ counsel; participate in briefing legal issues; conduct discovery, preparation of motions, and preparation for evidentiary hearing; participate in examination of witnesses and all phases of evidentiary hearing and post-hearing legal briefing; prepare request for compensation.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 50 hours ..... \$10,000

- Draft and edit petition for hearing and petition to intervene; assist with discovery and preparation of motions and briefs; prepare request for compensation.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 15 hours ..... \$10,425

- Supervise Consumer Watchdog counsel and participate in strategy discussions.

2. Expert Witness: Ben Armstrong

Ben Armstrong, Staff Actuary @ \$425 per hour, 100 hours ..... \$42,500

- Staff actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurer’s expert witnesses.

3. Consumer Watchdog Expenses

Office expenses (photocopies, facsimile, telephone calls, postage, etc.) .....\$2,000

Travel (ground transportation; airfare; hotel) .....\$5,000

Consumer Watchdog Subtotal .....\$199,425

4. Expert Witness: AIS Risk Consultants, Inc.

Allan I. Schwartz, President of AIS Risk Consultants @ \$915 per hour, 50 hours ..... \$45,750

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- Consulting actuary to review all discovery documents; prepare actuarial analysis; participate in meet and confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurers' expert witnesses.

Katherine Tollar @ \$415 per hour, 50 hours ..... \$20,750

- Assist Mr. Schwartz in document review, rate level analysis, preparation of testimony.

TOTAL ESTIMATED BUDGET: \$265,925