

August 29, 2013

Mr. Edward Wu
Public Advisor
California Department of Insurance
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12th Floor
Los Angeles, CA 90013
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Re: Request for Finding of Eligibility

Dear Mr. Wu:

I hereby request a continuing finding that I am eligible to seek compensation as an intervenor on behalf of consumer interests in appropriate proceedings before the Department, pursuant to California Code of Regulations, Title 10, Chapter 5, Subchapter 4.9, Article 14, Section 2662.2(a)(1). The Commissioner issued a favorable DETERMINATION RE: JOHN METZ ELIGIBILITY TO SEEK COMPENSATION for the following two year terms: 8/15/97-8/15/99; 8/12/99-8/12/01; 5/26/05-5/26/07; 6/15/07-6/15/09; 8/24/09-8/24/11; and 9/9/11-9/9/13.

In June 2007, the Commissioner also issued a favorable ruling on my Request for Compensation (re RH 06 09 2874, re Rules of Practice and Procedure for Rate Proceedings and Intervention.)

Since I am seeking a Finding of Eligibility as an individual, the requirements 2662.2(2)(A)-(G) are not applicable to my request.

Pursuant to CCR §2662.2(a)(1) the following information, which includes a description of some of the previous work I have done to represent the interests of consumers, is provided as a showing that I represent the interests of consumers:

For many years, I have worked to ensure, in matters relating to insurance, that all consumers are protected against dangerous, deceptive, dishonest, unfair and unlawful acts and practices, and that they get everything to which they are entitled – no more, but no less.

As a Director and Chairman of *JustHealth* (aka: California Consumer Health Care Council), [hereinafter "*JustHealth*"] a 501(c)(3) non-profit public benefit corporation, and President of the Phoenix Business Group, a consumer advocacy services company, I have overseen the provision of assistance to thousands of individual consumers and providers of healthcare goods and services, and others, who have requested assistance with problems they were experiencing. The majority of these problems involved insurance

My work includes the promotion of insurance reform and the protection of the interests of all insurance consumers in matters before the Legislature, the courts, the California Department of Insurance ("Department"), other Departments of Insurance across the U.S., other government agencies in California and across the U.S., and government agencies and through educating the public and the media.

I am particularly focused on the implementation and enforcement of consumer protection measures enacted for the benefit of consumers and policyholders, and act to defend and enforce these measures.

I have served as a public watchdog with regard to many matters affecting insurance consumers, participating in hearings before the Department, and educating the public concerning industry practices and their rights under various provisions of law.

I am a consumer advocate with more than 25 years of experience in drafting and contributing to initiatives, legislation and regulations, involvement in consumer litigation, and other consumer advocacy activities in every available forum.

I am one of the founding directors, and currently Chairman of the Board, of *JustHealth*, a 501(c)(3) non-profit public benefit corporation.

I have been President of the Phoenix Business Group, a consumer advocacy services company, and its predecessor companies, for 40 years.

I have devoted a substantial amount of my time and energies attempting to see that laws designed to protect insurance consumers from dangerous, deceptive, dishonest, unfair and unlawful acts and practices are fully and faithfully enforced.

For more than 25 years, I have represented the interests of business and individual consumers, in different forums and in numerous matters before this and other Departments of Insurance, in the courts, the legislature, in other public forums and in the media. A sampling of these activities includes:

- In the mid-1980s, I served on the State Advocacy Committee of the American Diabetes Association and was, for several years, Chairman of the major fundraising event for the Northern California Affiliate.
- In 1988, during the Proposition 103 campaign, I spoke in various venues around the state in support of its passage.
- After the 1989 Loma Prieta Earthquake, I worked with consumers and Department personnel in an attempt to ensure that insurers complied with the applicable laws and consumers were given all benefits to which they were entitled – no more, but no less

- In 1991, I was appointed, by the California Insurance Commissioner, to the Consumer Complaints and Unfair Practices Task Force and have participated in the drafting of the original and all subsequent amendments to the Fair Claims Settlement Practices Regulations (California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5, Section 2695 et seq.) that currently govern the claims practices of most insurers in California.
- After the 1991 Oakland Hills Firestorm (and, in later years, after various major fires in Southern California), I worked with consumers and Department personnel in an attempt to ensure that insurers complied with the applicable laws and consumers were given all benefits to which they were entitled – no more, but no less.
- After the Northridge and subsequent Southern California Earthquakes, beginning in January 1994, I worked with the California Department of Insurance on various issues affecting consumer rights arising out of these events, including the application of the 12-month time to sue provision and Insurance Code violations by insurers. Much of my input was adopted by then Commissioner Quackenbush and the Department. As quoted in the LA Times on April 29, 1997, the Commissioner came out publicly in support of this position. The LA Times went on to note that “[e]leven months ago Quackenbush’s own legal staff wrote a draft memo that came out on the side of consumers on the one-year time limit issue.” This resulted in consumers recovering many millions of dollars in benefits which they would have otherwise lost. In addition, the foregoing was among the factors that influenced the legislature to provide many claimants an additional 1 year window to make claims that had been denied because of the application of the 12-month time to sue provision. This legislation also resulted in consumers recovering many millions of dollars in benefits of which they would have otherwise been deprived.
- In later years, after various other California earthquakes, such as the one that struck in Napa County in September 2000, I worked with consumers and Department personnel in an attempt to ensure that insurers complied with the applicable laws and consumers were given all benefits to which they were entitled – no more, but no less.
- Beginning in the mid-1990s, I began bringing problems with the behavior of disability income insurance carriers to the Department’s attention. Up until that time, the Department’s Consumer Hotline had been incorrectly informing claimants that disability income insurers were not subject to the Fair Claims Statutes (IC 790 et seq.) or Regulations (CCR 2695 et seq.). As a result of my intervention, the Department acknowledged that disability income insurers were subject to these Statutes and Regulations – and, at that time, brought at least one administrative action against a violating insurer.
- During this same period, I also began bringing problems with the behavior of what were, or were to become, the UnumProvident (“UNUM”) companies to the attention of the Department. In the following years, I presented abundant evidence to the Department documenting the reckless, wrongful behavior engaged in by this company that caused devastating harm to thousands of its sick and disabled policyholders and their

families, as well as jeopardizing investors, competitors, regulators, the integrity of the industry and the general public.

Initially, the Department declined to take action on my proposals.

Finally, in October 2005, after a lengthy investigation and 48 other states' Insurance Commissioners entering into a seriously flawed settlement with UNUM, the California Department entered into a somewhat better Settlement Agreement, relating to approximately 25 categories of wrongful acts and practices that the Department had uncovered. The Department's allegations and Findings were substantially similar to those alleged in a case that I and another relator had brought earlier, in the name of the State of California, to hold this company accountable for its misconduct.

In an October 3, 2005 article in the LA Times, Commissioner Garamendi was quoted as saying: "UnumProvident is an outlaw company. It is a company that for years has operated in an illegal fashion."

There is as yet inadequate proof that UNUM has changed its behavior to fully comply with the California Settlement Agreement.

- Beginning in the late 1990s, I became aware of what appeared to be an industry-wide practice of brokers and independent agents being paid undisclosed commissions or "kickbacks" in exchange for steering their unwitting clients to particular insurers, in what appeared to me to be a clear violation of their duties to their clients. I brought this to the Department's attention and attempted to get the Department to take action against this inherently deceptive practice.

At the time, the Department declined to do so.

However, I, along with other consumer advocates, was appointed to the ABAC Subcommittee - Broker Fee Pamphlets, which was supposed to draft pamphlets that the Department was to publish on its website that would explain to consumers, for their protection against improper conduct, material issues regarding purchasing residential property and automobile insurance and dealing with agents or brokers.

Unfortunately, I had not been informed of this appointment and only accidentally discovered I had been appointed to this Subcommittee. I also discovered that none of the other consumer advocates were aware that they, too, had been appointed to this Subcommittee. In the end, I was the lone consumer advocate who actively participated in the work of the Subcommittee. Nevertheless, the Department was informed that my proposals that would have warned consumers that their insurance agents and brokers might be getting paid to steer them to buying policies that were not in their best interests, were supported by other consumer advocates.

The industry objected.

The Department declined to accept my proposed changes to the brochure.

Consumers were not warned that their insurance agents and brokers might be getting paid to steer them to buying policies that were not in their best interests.

I was assured by the Department that the brochures would be changed within a few months to deal with this problem. The brochures remain unchanged to this day.

Several years later, at the time, or shortly after, then-Attorney General, now-Governor, of the State of New York Eliot Spitzer picked up on and took action to deal with this same issue of insurance agents and brokers getting paid to steer them to buying policies that were not in their best interests, filed suit against major brokers and insurers – and, according to reports in the media, the market value of the insurance industry dropped perhaps as much as \$100,000,000,000 over the course of one week - the Department took some action against this inherently deceptive practice.

The Department's actions produced some positive results in dealing with the problem.

Unfortunately, much of this wrongful conduct appears to continue.

- As a result of my efforts on behalf of consumers and those of the California Senate Committee on Banking, Finance and Insurance, the Department's General Counsel testified that he had directed the Department to develop a protocol within the Department to make sure that in any case of significant fraud alleged against an insurance company, that the Department will take it up the chain of command and make sure that criminal referral is considered as one of the remedies that the Department looks at¹.

I have testified and/or provided other input in numerous other regulatory proceedings before the California Department of Insurance and the California Department of Managed Health Care, as well as proposing regulations, including the following few examples:

- Re: Intervenor regulations (at the specific request of William Palmer, who was, I believe, Special Counsel to then Insurance Commissioner Charles Quackenbush)
- Re: Adjuster training

¹ See: Senate Committee On Banking, Finance & Insurance
Oversight Hearing: Department of Insurance
November 21, 2005
Sacramento, CA
Senator Jackie Speier, Chair

- Re: Offsets to disability income insurance policies
- Re: "Use-it-and-lose-it" regulations
- Re: Proposed "Under Oath" regulations that in relation to any ratemaking, rulemaking or consumer complaint, would require any material fact upon which the Department is asked to rely, be verified before the Department will consider it in its decision.
- Re: Life insurer practices relating to the retention/distribution of funds to beneficiaries
- Re: Standards for repair and use of aftermarket parts
- Re: Scope of Prior Approval
- Re: Lender Placed Insurance
- Re: CAARP Rate Proposals

As noted above, in 2007, I intervened on behalf of consumers, before the CDI, in the proceedings (re RH 06 09 2874, re Rules of Practice and Procedure for Rate Proceedings and Intervention.), and received compensation for my work in those proceedings.

I have testified, provided input and/or been requested by the Court to act as an Amicus Curiae, on behalf of consumers, on consumer, insurance and health care related matters being considered by, among others, Federal District and Appellate Courts, U.S. Supreme Court, California Appellate Courts, California Supreme Court, California State Assembly, California State Senate, Office of the Consumer Advocate of the City of New York, and Government agencies in Maine and Texas.

I was the principal drafter of the document from which the core provisions of 1996's Propositions 214 and 216 were taken. Although both Propositions were defeated, more than 50%, of those who voted, voted YES for one, the other, or both.

I was Chairman of the Committee for HMO / Health Insurer Honesty & Accountability and principal drafter of the HMO / Health Insurer Honesty and Accountability Act, filed with the California Secretary of State in 1997.

I was Chairman of the HIAA Committee (Health Insurer Accountability Act of 2012).

In my various capacities, I have been involved in litigation across the U.S. on behalf of consumers, as an amicus, institutional plaintiff or relator.

Regulations, towards which I provided substantial input, have been cited in numerous Appellate Court decisions for the benefit of insurance consumers and the general public.

I have assisted many consumers in bringing requests for assistance to numerous government regulatory agencies, including, among others, the Department of Labor, the agency that oversees Medicare, the Maine Bureau of Insurance, California Department of

Insurance, California Department of Corporations, California Department of Managed Health Care, California Department of Consumer Affairs, and the Medical Board of California.

As a Director and Chairman of *JustHealth* and President of PBG, I have personally overseen the provision of assistance to thousands of individual consumers and providers of healthcare goods and services, and others, who have requested assistance with problems they were experiencing. The majority of these problems involved insurance.

I have worked and continue to work with many other consumer advocates and advocacy organizations, business and professional organizations, government agencies and members of the public to protect the interests of all members of the insurance buying and using public.

For all of the foregoing, I hereby request a continuing finding that I am eligible to seek compensation as an intervenor on behalf of consumer interests in appropriate proceedings before the Department.

Thank you.

Sincerely



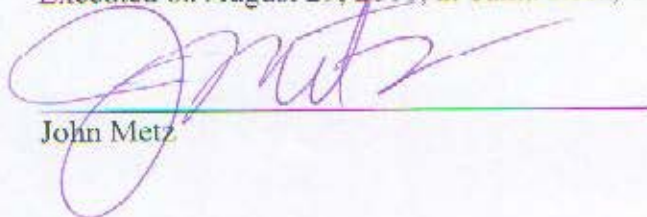
John Metz
1275 Fourth Street
Santa Rosa, CA 95404
707-539-4504

Section 2623.8 Verification

I am the one requesting a finding of eligibility to seek compensation as an intervenor on behalf of consumer interests in appropriate proceedings before the Department, pursuant to California Code of Regulations, Title 10, Chapter 5, Subchapter 4.9, Article 14, Section 2662.2(a)(1). The statements in the foregoing document are true and correct to the best of my knowledge.

I declare under penalty of perjury under California law that the foregoing is true and correct.

Executed on August 29, 2011, at Santa Rosa, California.



John Metz