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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rate Application of)
) FILE NO.: PA-2013-00003
)
ALLSTATE INSURANCE COMPANY,)
ALLSTATE INDEMNITY COMPANY,)
NORTHBROOK INDEMNITY COMPANY,)
)
Applicants.)
_____)

PROPOSED DECISION

Introduction and Summary of Proposed Settlement

This proposed decision adopts and incorporates by reference the attached *October 21, 2013 Joint Stipulation and Request for Proposed Decision and Order* (the "Stipulation"), thereby approving an overall rate decrease of .20 percent in Allstate's¹ automobile rates.

This is a prior approval rate case, arising under Insurance Code sections 1861.05 et seq., one of a series of statutes encompassed by Proposition 103.² Pursuant to Insurance Code section 1861.08, the proceeding is conducted under the formal hearing procedures of chapter 5 of the Administrative Procedure Act (Government Code sections 11500 et seq.)

In its initial application, filed on December 31, 2012, Allstate sought to increase its automobile insurance premium rates by 6.11 percent and introduced six "affinity groups" with

¹ The term "Allstate" includes, for purpose of this decision, all three of the named applicants.

² Proposition 103 was enacted by the voters on November 8, 1998. Among other things, it established a method for regulating insurance rates consisting of a rollback period and "a permanent regulatory regime comprising the 'prior approval' system." (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 243, 252, 288-289.) The statutory provisions contained in Proposition 103 are also at Article 9 of part 2 of division 1 of the Insurance Code, commencing with section 1861.01.

different (discounted) base rates. Allstate modified that initial rate request through an updated application filed on June 17, 2013, requesting a maximum permitted rate increase of 5.29 percent, still maintaining the six affinity groups.³

The settlement Stipulation resolves the rate issue by stipulating to a .2 percent overall decrease in Allstate's automobile insurance rates, with discounts or increases to be distributed among the affinity group programs (approximately 49% of the policyholders), and the other policyholders (approximately 51% of the policyholders).⁴

The overall .2 percent decrease breaks down by coverage as follows:

<u>Coverage</u>	<u>Change</u>
Bodily Injury	0.00%
Property Damage	0.00%
Medical	0.00%
Uninsured/Underinsured Motorist	0.00%
Collision	-0.50%
Comprehensive	-0.49%
Fixed Expense Fees	0.00%
Overall	<u>-0.20%</u>

Factual and Procedural Background

Administrative Law Judge David R. Harrison ("the ALJ") presided over the proceedings.

Attorneys Daniel M. Goodell and James Stanton Bair, III, of the California Department of Insurance Legal Division, Rate Enforcement Bureau, represented the Department.

³ The six affinity groups are Specialized Professionals, Professionals, Homeowner-Association, Condo-Association, Alumni Association, and Allstate Motor Club. Allstate presents the affinity groups as a marketing device. Under the settlement, discounts for the affinity groups are as follows:

Specialized Professionals (-2.47%);
Professionals (-2.47%);
Homeowner Association (-2.0%);
Condo Association (-.15%);
Alumni Association (-.15%);
Allstate Motor Club (-.15%)

The impact on non-members of an affinity group is a Standard Program premium increase of 1.24%. The group discounts are discounts from the Standard Program premium. (October 21, 2013 Declaration of Laura Hoffman, paragraph 10, page 5.)

⁴ The percentages of affected policyholders are taken from page 4, lines 1-10, of Laura Hoffman's Declaration, discussed *infra*.

Attorneys Steven H. Frankel, Robert Hoffman, and Katherine Evans of Dentons US LLP represented Allstate.

Attorneys Harvey Rosenfeld, Pamela Pressley, and Laura Antonini represented Intervenor, Consumer Watchdog (“Consumer” or “CWD”).

On December 31, 2012, Allstate filed automobile insurance rate applications 13-41, 13-42, and 13-43, seeking to increase its automobile insurance premium rates by 6.11 percent and introducing six proposed “affinity groups” with different base rates.⁵ On January 11, 2013, pursuant to Insurance Code section 1861.05, the Insurance Commissioner (“Commissioner”) notified the public of the application.

On February 25, 2013, Consumer filed timely Petition for Hearing, Petition to Intervene and Notice of Intent to seek Compensation. On March 2, 2013, the Commissioner granted Consumer’s petitions.

On March 25, 2013, pursuant to Insurance Code section 1861.0 5(c) (2), the Commissioner issued Notice of Hearing.

Pursuant to the ALJ’s notice and order dated April 9, 2013, the parties filed a joint Scheduling Conference statement on April 24, 2013. The ALJ conducted the Scheduling Conference on April 25, 2013. The Conference Order set the evidentiary hearing for October 21, 2013, and, as the parties had agreed, ordered Allstate to update its application using data through the end of the first quarter of 2013. On June 7, 2013, Allstate filed the updated application, which lowered the requested premium increase from the original 6.11 percent to 5.29 percent.

Because the hearing date had been set for October 2013, it appeared that Allstate would be able to provide updated information through the second quarter of 2013 in advance of the hearing. Allstate reviewed when it would be able to provide the updated information, and

⁵ The six affinity groups and their discounts are itemized in footnote 3, *supra*, at page 2 of this Proposed Decision.

On October 14, 2013, the ALJ conducted a scheduling conference in the case. The scheduling conference notice contemplated setting a timetable for an evidentiary hearing. However, the conference deferred any discussion of a calendar, and instead set a timetable for the parties to present an amended or new settlement stipulation with a full package of supporting declarations. On October 21, 2013, the parties (other than Consumer), filed a new joint stipulation for settlement (the Stipulation), along with supporting declarations, as discussed below.

The Stipulation asserts the following undisputed facts and procedural history:

1. Allstate's written premium for automobile insurance in California in 2012 was \$1,473,721,963, distributed by coverage as follows:⁸

<u>Coverage</u>	<u>Premium (in \$\$)</u>
Bodily Injury	310,081,033
Property Damage	319,576,122
Medical Expenses	35,312,752
Uninsured/Underinsured Motorist	79,447,174
Collision	459,143,424
Comprehensive	159,108,332
Fixed Expense Fees	<u>111,053,126</u>
Total	<u>\$1,473,721,963</u>

2. The rate change proposed in Allstate's updated application of June 7, 2013 was to increase the rate by 5.29 percent.⁹

3. Instead of the rate increases it previously sought, Allstate has now agreed to decrease its overall automobile rates by two-tenths of one percent (0.20%), broken down by coverage as follows:¹⁰

<u>Coverage</u>	<u>Rate Change</u>
Bodily Injury	0.00%
Property Damage	0.00%

⁸ Stipulation, page 4, paragraph 4.

⁹ *Id.*, page 2, paragraph E.

¹⁰ *Id.* page 4, paragraph 3.

Medical Expenses	0.00%
Uninsured/Underinsured Motorist	0.00%
Collision	-0.50%
Comprehensive	-0.49%
Fixed Expense Fees	<u>0.00%</u>
Overall	<u>-0/20%</u>

4. The signing parties (Allstate and the Department) agree the terms of the settlement are fundamentally fair, adequate, reasonable and in the interests of justice.¹¹

5. The stipulation is made solely for the purpose of reaching a compromise among the parties. Pursuant to 10 CCR §2656.4(a), discussion, admissions, concessions or offers to stipulate or settle, whether oral or written, made by any party in negotiating the Stipulation are confidential and shall not be admissible or discoverable for any purpose in any proceeding.

6. Nothing in the Stipulation constitutes an admission of liability on the part of Allstate or an admission of a violation of any state law, decision, rule or regulation. Nor does the Stipulation constitute an acknowledgment or admission of the validity of any allegations or claims CWD [Consumer] asserted in this proceeding, it being expressly agreed by the [Insurance] Department that Allstate denies all such allegations and claims.¹²

7. Allstate may assert in any civil or administrative proceeding that the Department has approved Allstate's Application and use of affinity groups. However, Allstate agrees "it will not assert that approval of the Application or this Joint Stipulation is evidence of or determinative of whether Allstate's use of affinity groups complies with the Insurance Code and/or applicable regulations, or bars a civil or administrative proceeding."¹³ Allstate believes its use of affinity groups, and all other aspects of its rates and programs comply with all applicable laws and regulations and does not waive its right to assert or defend the legality of them in any proceeding

¹¹ *Id.* page 4, paragraph 5

¹² *Id.* page 5, paragraph 7

¹³ *Id.*, page 5, lines 9-12, paragraph 8.

and in any forum.¹⁴

8. No commitment or agreement on compensation payable to CWD has been reached.¹⁵

The Parties agree, however, that the Commissioner's Order Adopting the Administrative Law Judge's Proposed Decision in this proceeding will constitute a decision or order within the meaning of Insurance Code section 1861.10(b).¹⁶

9. The Commissioner retains jurisdiction to enforce the Stipulation and the Requested Order.

The "Requested Order" submitted within the stipulation (Stipulation, page 3, Paragraph K, lines 11-13) asks the ALJ to "adopt this Stipulation as the proposed decision in this proceeding to be submitted for approval to the Commissioner." It contains no time commitments for implementing the rate changes.

Objection to Settlement

On October 25, 2013, Consumer Watchdog filed *Consumer Watchdog's Objection to the October 21, 2013 Stipulation, etc.*, and requested a hearing pursuant to California Code of Regulations title 10, section 2656.1(g).¹⁷

¹⁴ *Id.*, page 5, paragraph 8. Allstate's non-waiver is, however, subject to the limitation in paragraph 8 that Allstate cannot present the Department's approval as evidence of legality or as a bar to any administrative or civil proceeding attacking the affinity group programs.

¹⁵ Title 10, section 2656.1(b) of the California Code of Regulations forbids such a commitment or agreement.

¹⁶ Section 1861.10 (b) provides: "...(b) The commissioner or a court shall award reasonable advocacy and witness fees and expenses to any person who demonstrates that (1)the person represents the interests of consumers, and, (2) that he or she has made a substantial contribution to the adoption of any *order*, regulation, or *decision* by the commissioner or a court. Where such advocacy occurs in response to a rate application, the award shall be paid by the applicant. (Emphasis added.)

¹⁷ Section 2656.1(g) provides: "(g) Any party objecting to a proposed settlement or stipulation may, within five (5) days of service of the proposed settlement or stipulation, file a written objection and may request a hearing before the administrative law judge on the proposed settlement or stipulation. When a hearing is requested, the administrative law judge shall hold a hearing on the objection within ten (10) business days of the filing of the request."

The ALJ set the hearing for November 7, 2013, and set forth a timetable for responsive filings. On November 5, 2013, Allstate and CDI filed briefs and other documentation opposing CWD's objection.

The ALJ conducted the hearing pursuant to title 10, section 2656.1(g) of the California Code of Regulations on November 7, 2013 in the San Francisco hearing room of the Department of Insurance at 45 Fremont Street, 22nd Floor, San Francisco, California. The purpose of the hearing was to hear argument and evidence regarding *Consumer Watchdog's Objection to the October 21, 2013 Stipulation, etc.*, filed on October 25, 2013.

CWD's written objection related solely to Allstate's proposed affinity group programs. The objection was based on the argument that the affinity groups violate the provisions of Proposition 103, governing mandatory factors, and certain optional factors that may be used in determining rates.

At the hearing, CWD counsel presented oral argument consisting entirely of support for CWD's contention that the affinity group programs were illegal and violated Proposition 103.

The October 21, 2013 Stipulation for Settlement does not ratify the affinity group programs. It states the programs have been approved by the Department, but leaves them open to attack in any administrative or civil proceeding, with the commitment on Allstate's part "that it will not assert that approval of the Application or this Joint Stipulation is evidence of or determinative of whether Allstate's use of 'affinity groups' complies with the Insurance Code and/or applicable regulations or bars a civil or administrative proceeding." (*October 21, 2013 Joint Stipulation*, page 5, numbered paragraph 8.)

Allstate responded to CWD's objection by first asserting CWD lacked standing to object to the October 21, 2013 Joint Stipulation, because CWD had signed an earlier settlement stipulation that was substantially identical to the current proposed stipulation. In doing so,

Allstate cited (without adequate explanation of their applicability) various court decisions which Allstate contended prohibit CWD from opposing the new stipulation after signing the earlier one. The ALJ reviewed the cases and found that none of them clearly established the unconditional bar Allstate claimed.

The principal argument offered by Allstate and the Department was that the Department has approved comparable affinity group programs in the past for other insurance companies, and fairness required allowing them for Allstate.

The Department asserted that, in approving affinity group programs in the past and in the present case, it relied on Insurance Code section 1816.12¹⁸ and treated affinity group programs as a type of “group insurance.” The Department had approved “similar” groups for other insurance companies. In support of this position, Allstate and the CDI offered substantial detailed declarations describing programs the CDI had approved for other auto insurance companies in California.^{19, 20}

¹⁸ Section 1816.12 states:

Group Insurance Plans. Any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group, occupation or type of group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.

¹⁹ *Supplemental Declaration of Lynne Wehmueller* for the CDI; *November 5, 2013 Declaration of Laura Hoffman* for Allstate.

²⁰ These included programs for Mercury Insurance Company (Scientists, Engineers, and Educators); GEICO groups, including accountants, bank officers, city managers, dentists, economists, foresters, geographers, historians, interpreters, judges, lawyers, mathematicians, optometrists, physicians, police chiefs, school principals, reporters, speech pathologists, surveyors, therapists and treasurers; for Progressive West Insurance Company, homesites condo owners association members, homesites homeowner association members; for Mercury Insurance Company, members of alumni associations for 4-year accredited colleges; GEICO groups, including alumni associations for specifically listed colleges; for Interinsurance Exchange of the Automobile Club, active members of alumni associations for four-year college or university; for CSE Safeguard Insurance Company’s Road Guard Program, members of the Nation Safe Drivers Safeguard Auto Club (Wehmueller Declaration, pages 2-4, ¶¶4-8). Ms. Hoffman’s declaration noted and explained similar programs for Progressive Select Insurance Company (business and professional groups); 21st Century Casualty Company (fifteen groups of licensed or degreed professionals, degreed artists/writers, human resource managers, sales and marketing executives and managers, law enforcement officers, professional government employees; GEICO Professional Group Insurance for well over 100 categories of white collar workers; Interinsurance Exchange of the Automobile Club of California, lawyers, scientists, educators and engineers; Farmers Insurance, business and professional groups, including accountants, dentists, educators, engineers, physicians/surgeons, and scientists, architects, firefighters, nurses, police; GEICO, several hundred (listed) sponsored marketing groups. (Hoffman Declaration ¶¶6-15, pages 2-5; Exhibits B-M.)

CWD is not foreclosed from attacking the affinity programs, and may pursue various remedies to seek their nullification, including requesting a rulemaking hearing to clarify the issues presented in this case and other cases that may arise under Insurance Code Section 1816.12. Such a request does not, however, assure a rulemaking hearing will occur,

Section 2656.1(a) of title 10 of the California Code of Regulations, states:

- (a) Parties may stipulate to the resolution of an issue of fact or the applicability of a provision of law material to the proceeding, or may agree to settlement on a mutually acceptable outcome to a proceeding, with or without resolving material issues.

In this case Allstate's original rate applications had sought a premium increase of 6.11 percent, then reduced to 5.29 percent in the amended application. The settlement stipulation results in a "mutually acceptable outcome," namely, an overall premium decrease of .20 percent. Based on Allstate's 2012 automobile premium in California of almost \$1.5 billion, each percentage point amount of requested premium increase is approximately \$15 million. The original application (at 6.11%) would have resulted in an increase of approximately \$90 million; the amended application (at 5.29%) would have resulted in an increase of \$75 million. The settlement avoids the peril of comparable increases, saves both time and litigation costs, and may be approved even though it does not resolve the legal issue of whether the affinity group programs are legal.

The settlement preserves to CWD and whoever else may seek to attack the programs, the right to proceed in an appropriate case. Until these programs are held otherwise, the Department has affirmed their legality, and nothing is gained by rejecting the entire settlement because of problems with the affinity group concept.

Having considered the parties' pleadings and oral arguments, the ALJ overruled Consumer's objections to the settlement.

DISCUSSION

I. Standard for Reviewing the Stipulation for Settlement

California Code of Regulations, title 10, section 2656.2, applies in determining whether to recommend the Stipulation. Section 2656.2, subdivision (a), provides:

The administrative law judge shall reject a proposed stipulation or settlement whenever, in his or her judgment, the stipulation or settlement is not in the public interest and is not, taken as a whole, fundamentally fair, adequate and reasonable...

This standard is appropriate for rate-review cases, because of the substantial public interest in reasonable insurance rates expressed in Proposition 103.

The section 2656.2 standard for rejecting a settlement is substantially a restatement of the standard applied by courts when reviewing class action settlements and by the California Public Utilities Commission when reviewing settlements in its rate cases. (See *Officers for Justice v. Civil Service Commission of the City & County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625, cert. denied 459 U.S. 1217 (1983); *In Re PG&E (Diablo Canyon)* (1988) 30 Cal. P.U.C.2d 189, 222.)

In *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-1803, the court explained the purpose and appropriate analysis for reviewing a settlement:

““[T]o prevent fraud, collusion or unfairness to the class, settlement or dismissal of a class action requires court approval.”” (*Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal. App. 3d 573, 578-579, 165 Cal. Rptr. 1; see also *Marcarelli v. Cabell* (1976) 58 Cal. App. 3d 51, 55, 129 Cal. Rptr. 509.) The court must determine the settlement is fair, adequate, and reasonable. (See *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F. 2d 615, 625; Fed. Rules Civ. Proc., rule 23(e), 28 U.S.C.) The purpose of the requirement is “the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (*Officers for Justice v. Civil Service Com.*, supra, 688 F.2d at p. 624.)

. . . Assuming the burden is on the proponents, a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (Newberg & Conte, *supra*, § 11.41, pp. 11-91.)

. . . “So long as the record . . . is adequate to reach “an intelligent and objective opinion of the probabilities of success should the claim be litigated” and “form an educated estimate of the complexity, expense and likely duration of such litigation . . . and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise,” it is sufficient.” [Citations.] Of course, such an assessment is nearly assured when all discovery has been completed and the case is ready for trial. [Citation.]” (*Ibid.*)

In a Proposition 103 rate case, determining whether a settlement is fundamentally fair, adequate, and reasonable involves balancing some or all of the following factors: 1) the relative strengths of the insurer's case for its requested rate and the opposition's case against it; 2) the risk, expense, complexity, and likely duration of further litigation, with attendant delay in effecting changes; 3) the amount of the settlement; 4) the amount of discovery done; 5) the state of the proceedings; 6) the experience and views of counsel and/or the parties' managers or experts; 7) the involvement of a governmental entity; and 8) the reaction (if known) of consumers to the proposed settlement. (Cf. *Officers for Justice*, *supra*, 688 F.2d at p. 625; *Dunk v. Ford*, *supra*, 48 Cal. App. 4th at p. 1801; *Protective Committee of Independent Stockholders v. Andersen* (1968) 390 U.S. 414, 424-425, 20 L.Ed2d 1, 88 Sup. Ct. 1157 (bankruptcy context).)

As the court stressed in *Officers for Justice*, the court's review of a settlement should not turn into a full hearing on the merits or a rehearsal for one. The court is not to reach ultimate conclusions on contested issues of fact and law.

II. Evidence Supporting the Stipulation for Settlement.

The evidence in this case is meager, as no formal discovery appears in the formal record. The only asserted bases for the settlement are those described in the declarations offered by the parties in support of it.

Supporting Declarations.

In support of the Stipulation, the parties provided the following specific declarations:

A. Declarations from Applicant in support of the settlement

1. October 21, 2013 Declaration of Robert W. Hoffman,

Mr. Hoffman is an attorney at Dentons US LLP, counsel for Allstate in this proceeding. He has worked in insurance rate matters in California for several years, and in his capacity as counsel for Allstate, participated in the negotiations for settlement of this case.²¹ He notes that Allstate has now agreed to a premium decrease of .20 percent, instead of the 6.11 percent increase it sought in its previously submitted application.²²

In addition to the .20 percent rate decrease, Allstate has agreed to introduce six new affinity groups. He asserts the proposed new affinity programs are similar, if not identical, to programs approved by the Department for other carriers, and the reduced rates for these programs are very similar to the reduced rates approved by the Department for “those same programs for other companies.”²³

He concludes that, based on his discussions with Allstate’s actuaries and his own experience and knowledge, he believes the Stipulation settlement is fundamentally fair, adequate, reasonable, and in the interests of justice. He further asserts the “overall .20 percent premium reduction results in rates that comply with applicable California and statutory and regulatory standards.” Finally, he states the Stipulation regarding the rate reduction and the implementation of Allstate’s new programs avoids the cost and uncertainty of litigation over the rate application.²⁴

²¹ Robert Hoffman Declaration, paragraph 2, pages 1-2.

²² *Id.*, paragraph 3, page 2.

²³ *Id.*, paragraph 4, page 2.

²⁴ *Id.*, paragraphs 5-8, page 2.

2. October 21, 2013 Declaration of Laura Hoffman.

Ms. Hoffman is the California Analytics Manager and Actuary for Allstate. She is an Associate of the Casualty Actuarial Society. In her capacity as Allstate's actuary, she managed most of the actuarial analysis, and is familiar with all of the analysis supporting the proposed rate. She participated in negotiating the stipulated settlement in this case.²⁵

She has evaluated the premium decrease the settlement contemplates, and asserts the stipulated settlement produces rates that comply with applicable statutory standards, and is fundamentally fair, adequate, reasonable and in the interests of justice.²⁶

She then asserts that Allstate's agreement to the stipulated settlement is based on several adjustments to the previously proposed rate increase, including the following:²⁷

- a. A revised application was filed to update the underlying data to include data through the first quarter 2013. The revised application was submitted on June 7, 2013 for a premium increase of 5.30 percent.²⁸
- b. Adjustments were made to the selections that were included in the revised application for trends and ultimate losses.
- c. Adjustments were made to the calculation of the excluded expense factor in the revised application.
- d. Adjustments were made to the selected discount levels and expected distributions for the introduction of the proposed affinity groups.

She asserts the adjustments that convert the 5.30 percent premium increase sought in Allstate's first revised application to a .20 percent decrease, produce rates complying with applicable California statutory standards.²⁹

²⁵ Laura Hoffman Declaration, paragraph 2, pages 1-2.

²⁶ *Id.*, page 2, paragraph 3,

²⁷ *Id.*, page 2, paragraph 4.

²⁸ The actuarial testimony is that Allstate sought a 5.29 % (not 5.30%) increase.

She then provides a detailed explanation of how the rate decrease will be distributed, including (a) changes in premium for collision coverage (decrease by .50 percent) and for comprehensive coverage (decrease by .49 percent);³⁰ and (b) changes in premium by applying the proposed discounts for policyholders in each affinity group; and (c) corresponding premium increase for those not in any affinity group.³¹ Her analyses support the numbers used in paragraphs 2 and 3, on pages 3 and 4 of the Stipulation.

In the final section of her declaration, Ms. Hoffman specifically treats the affinity programs.³² She declares that, in preparing the calculations for the new affinity programs, she caused to be researched and created Allstate's Exhibit 17 to its amended rate application, and attaches a copy as Exhibit A to her declaration. The exhibit identifies a number of similar---if not identical --- programs approved by the Department for use by Allstate's major industry competitors. She asserts she also caused to be researched and created a survey of the following competitors: Farmers, 21st Century, Mercury, AAA, Nationwide, Liberty Mutual, GEICO, Progressive and Esurance, and they all used programs. This research disclosed the Department has been approving programs since the mid-1990s.

She also caused to be researched and created a summary of new filings approved by the Department in April 2013. The summary showed both Farmers and GEICO had rate filings approved that included programs for business and professional groups and alumni associations.

Finally, she referred to the Department's Class Plan Instructions, and notes they specifically refer to using programs in rate filings, citing Insurance Code section 1861.12³³ as

²⁹ *Id.*, page 2, paragraph 5.

³⁰ *Id.*, Page 3, paragraph 6.

³¹ *Id.*, pages 3-5, paragraphs 7-10. Chart at top of page 4, shows affinity group members would comprise about 49% of Allstate's policyholders, and non-members would comprise about 51%.

³² *Id.*, pages 5-6, paragraphs 11-15.

³³ Section 1861.12 was part of the original Proposition 103, and states:

Group insurance plans. Any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.

allowing group programs without restrictions as to the purpose of the group. She attaches a copy of the Instructions to her declaration as Exhibit B.

3. October 21, 2013 Declaration of Jeffrey Deigl.

Mr. Deigl is Vice President and California State Manager for Allstate. In this capacity, he managed the Allstate rate applications in this case, is familiar with all of the analysis supporting the proposed rate “increase”(sic), and participated in the negotiation of the stipulated settlement.³⁴ In his capacity as California State Manager, he also has knowledge of Allstate’s 2012 written premium in the private passenger automobile line of insurance by coverage. He also has knowledge of the rate changes requested in Allstate’s filing as well as the rate changes agreed to in the Stipulation.³⁵ He then lists the premiums written during 2012, as shown in paragraph 4 of the Stipulation, and shows how Allstate will implement the overall .20 per cent rate decrease by reducing the rates for collision coverage (-.50 percent change) and comprehensive coverage (-.49 percent change).

B. Declarations from the Department of Insurance in Support of the Settlement

1. Declaration of Daniel M. Goodell. Lead Attorney.

Mr. Goodell is an attorney with the Department of Insurance. He has been employed in the Department’s Rate Enforcement Bureau since January 1994 and has represented the Department in numerous Proposition 103 rate applications and other rate related matters. He is the lead attorney for the Department in this case and has participated in all phases of it.³⁶

He is informed and believes the Allstate applicants are and were at all times licensed by the Department to conduct personal automobile insurance business in California.

³⁴ Deigl Declaration, paragraph 2, pages 1-2.

³⁵ *Ibid.*

³⁶ Goodell Declaration, pages 1-2, paragraphs 1-3

He is informed and believes that on or about December 31, 2012, Allstate filed automobile rate applications 13-41, 13-42, and 13-43 for its personal automobile insurance rates. He outlines the various procedural steps that occurred after the public notice on January 11, 2013 through the June 20, 2013 filing of Allstate's amended application (the "Amended Application") that included updated data from the first quarter of 2013.³⁷

From the time the Department issued Notice of Hearing (on March 25, 2013), he participated in settlement discussions among Allstate, the intervenor (Consumer), and the Department.

On August 16, 2013, the parties in this case jointly filed a Stipulation and Request for Proposed Decision and Order (the "Original Stipulation"), which provided Allstate was to reduce its overall automobile insurance rates by 0.2%, and implement six new affinity groups at specified rate levels lower than the rates for Allstate's "standard"³⁸ program.

Specifically with regard to the affinity group programs, Mr. Goodell asserts:

14 . CDI has approved affinity groups for other automobile insurers under the language of CIC 1861.12, which provides as follows:

1861.12. Group insurance plans. Any insurer may issue any insurance coverage on a group plan, without restriction as to the purpose of the group. Group insurance rates shall not be considered to be unfairly discriminatory, if they are averaged broadly among persons insured under the group plan.

15. Allstate's Affinity groups are consistent with affinity groups that CDI has approved for other insurers under CIC 1861.12.

* * *

23. CDI has approved affinity groups for numerous other insurers including those specified in the accompanying declaration of Ms. Wehrmueller. Based on my conversations with Ms. Wehrmueller and others in RBB, as well as my own assessment, I believe the six affinity groups approved for Allstate under this

³⁷ *Id.*, page 2, paragraphs 5-11.

³⁸ "Standard" is not a program. It is simply Allstate's California policyholders who are not members of any affinity group (51% of policyholders).

agreement are consistent with affinity groups CDI has approved for other insurers under CIC 1861.12.

He asserts his belief that the October 21, 2013 Stipulation is, taken as a whole, fundamentally fair, adequate, just and reasonable.³⁹

In evaluating the Stipulation, he relied in part on the opinions of members of the Rate Regulation Branch (“RRB”) including, among others Lynne Wehmueller, Senior Casualty Actuary for the Department. He is informed and believes the RRB staff, including Ms. Wehmueller, thoroughly reviewed the applications and all amendments, as well as additional and updated information supplied by Allstate. He is familiar with the declarations of Joel Laucher and Ms. Wehmueller in this matter. He has discussed the applications and amendments with them and others in RRB and understands they have concluded the overall rate decrease of .20 percent is consistent with the applicable statutes, regulations and the regulatory formula.⁴⁰

Based on his conversations with Mr. Laucher, Ms. Wehmueller and others at RRB, as well as his own assessment, he believes the settlement complies with the applicable legal standards found at Insurance Code section 1861.05, and related provisions of the California Code of Regulations.⁴¹

He concludes his declaration by asserting (paragraph 25) the settlement was the result of negotiations through counsel in an arms-length relationship, and he is unaware of any fact or law that would contravene a finding that the settlement is just and reasonable.⁴²

³⁹ Goodell Declaration, ¶19.

⁴⁰ *Id.* ¶¶20-22.

⁴¹ *Id.* ¶24.

⁴² *Id.* ¶26

3. Declaration of Lynne Wehmuller, Senior Casualty Actuary.

Ms. Wehmuller is a Senior Casualty Actuary with the Department. She received a Bachelor of Arts degree in 1988 from the University of California, San Diego with a double major in applied mathematics and sociology. She is a fellow of the Casualty Actuary Society (“CAS”) and a member of the American Academy of Actuaries. The CAS is a professional organization of property-casualty actuaries responsible for developing and administering examinations candidates must complete to become designated actuaries. CAS membership is guided by professional standards set forth in various Statements of Principles, is bound by the CAS Code of Professional Conduct, and disciplined by the Actuarial Board of Counseling and Discipline for any violations. The CAS also establishes continuing education requirements for its members, and offers opportunities to meet those requirements through educational meetings and seminars.

The American Academy of Actuaries (“Academy”) is a national actuarial society whose members work in property-casualty insurance as well as other areas of practice. The Academy’s Actuarial Standards Board establishes actuarial standards of practice (often referred to as “ASOP”), providing direction to actuaries. The Academy also establishes continuing education requirements and applies its Code of Professional Conduct to its members.⁴³

Ms. Wehmuller has almost twenty-five years of professional actuarial experience. She worked for the first twenty-three years with Farmers Group, Inc., holding multiple positions as an analyst and achieving managerial levels in various practice areas, including pricing personal lines exposures and reserving for commercial and workers’ compensation coverages. She has had extensive experience in multi-state ratemaking for homeowners and private passenger automobile insurance. From December 1999 to February 2011, she was the lead pricing actuary

⁴³ Wehmuller Declaration, ¶¶1-3.

for Farmers' California Homeowners products. Since joining the Department in June 2012, she has evaluated rate application for homeowners and private passenger automobile insurance, and has provided advice on a variety of rate-related issues for these and other lines of insurance.⁴⁴

Regarding the reasonableness of the proposed settlement, Ms. Wehmueller states she has reviewed the Allstate rate filings, and, based on her own independent calculations using the raw data Allstate provided, has determined that an overall rate decrease of .20 percent is actuarially justified.⁴⁵

She states she performed an independent analysis of the Allstate data. In doing this, she selected a single trend period that best reflected the most actuarially sound projected net trend, reflecting more recent movement in various exposure distributions and/or removing the upward bias she found in Allstate's loss severity selections.⁴⁶

She also selected different loss development methods from Allstate's for property damage and uninsured or underinsured motorist ("UM/UIM") coverages. For property damage, she selected the "incurred" approach, and for UM/UIM, she selected the "paid" approach as being the most actuarially sound.⁴⁷

Turning to the proposed affinity groups, she states Allstate introduced six new affinity groups at varying rate levels discounted from the "Standard" rate, where the Standard rate is the rate for all policyholders not otherwise eligible for any of the new affinity groups. She asserts CDI has approved similar programs for many insurers, including GEICO, Safeco, Hartford, Auto Club of Southern California, Allied, Nationwide, Mercury, Travelers and CSE. She then gives

⁴⁴ *Id.*, ¶4

⁴⁵ *Id.*, ¶5.

⁴⁶ *Id.*, ¶6

⁴⁷ *Id.*, ¶7

examples of insurers with rating groups similar (“though not identical”) to those Allstate proposes, and asserts as follows:⁴⁸

Allstate’s “Specialized Professionals” and “Professional” groups are comprised of occupations that are similar in total or in part to GEICO’s “Professionals” and “Skilled Artisans” groups, and Mercury’s “Scientists and Engineers” and “Educators” groups, all of which CDI has approved.

Allstate’s “Homeowners Association” and “Condo Association” groups are similar to portions of Progressive West’s “Business and Professionals (BAP)” group which also includes homeowners and condominium associations.

Allstate’s “Alumni Association” group is similar to portions of GEICO’s “Sponsored Marketing” group and to Auto Club of Southern California’s “Alumni Association” group.

Allstate’s “Allstate Motor Club” group is similar to CSE’s “Roadguard” group.

She finds that introducing these affinity groups with their attendant proposed discounts will result in an estimated increase of 1.24 percent for the Standard group, and a .20 percent overall rate reduction in Allstate’s private passenger rates. She asserts her independent calculations show the overall rate decrease of .20 percent will result in a reasonable, not excessive rate. Her methodology is consistent with past Department practices and in accordance with sound actuarial principles and applicable regulations.

Turning to the arms-length nature of the settlement, she states Allstate used its own actuary to analyze the data and participate in the ensuing discussions with the Department. Ms. Wehmueller performed an independent analysis, and used a methodology different from Allstate’s. Her methodology was based on commonly accepted methods of actuarial science, was consistent with applicable regulations, and consistent with methods and statistical premises she has applied in reviewing other rate applications.

⁴⁸*Id.*, ¶8.

Her professional opinion is that a .20 percent overall rate decrease is justified. This conclusion is based on the totality of her training and experience and her independent analysis of Allstate's data. Her conclusion is not a result of accepting the methods and presumptions asserted by Allstate.

3. Declaration of Joel Laucher in Support of October 21, 2013 Stipulation.

Mr. Laucher has been Deputy Commissioner of the Rate Regulation Branch of the Department since October 2009. He was Chief of the Market Conduct Division of the Department from February 2002 until his appointment as Deputy Commissioner. He has been employed in various capacities by the Department since 1985. He has personal knowledge of all statements in his declaration, except for matters stated upon information and belief. If called to testify, he could and would do so truthfully and competently.

Mr. Laucher's duties include managing the Rate Regulation Branch ("RRB"), supervising the six Bureau Chiefs and five Senior Casualty Actuaries in the RRB, and overseeing the work of the RRB. RRB reviews rates, class plans and forms filings. He works closely with his staff in certain cases, including this one.

He personally reviewed portions of the Allstate rate filing submitted in December 2013, as well as additional data Allstate subsequently submitted. In conducting his review, he relied on various RRB staff, including the Bureau Chief of the Handling Bureau, and Senior Casualty Actuary Lynne Wehmueller. Based on his review and the input he received from RRB members, it is his opinion that an overall rate decrease of .20 percent complies with all applicable laws and regulations.⁴⁹

⁴⁹ Laucher Declaration, ¶¶3-5.

FINDINGS OF FACT AND ANALYSIS

The threshold question is whether there is sufficient evidence to conclude that the settlement is fair and reasonable. The evidentiary record available to the ALJ is meager. There was no prefiled testimony and no formal discovery. It is clear, however, that Allstate freely provided the information the other parties requested, and the professional advisors (lawyers and actuaries) concluded they had enough information to formulate and agree to a settlement.

In the analysis of the *Dunk v. Ford*⁵⁰ court, investigation and discovery should be sufficient to allow counsel and the tribunal to act intelligently.

The *facts* set forth in the Stipulation and supporting Declarations have been submitted without objection. These facts are consistent with the ALJ's understanding from the parties' declarations, and from his familiarity with the sophistication and experience of the parties' legal and actuarial advisors. The facts as set forth in the Stipulation are adopted as the findings herein.

It appears that a gulf initially existed between the positions and contentions of the parties. Applicant sought to increase its rates by 6.11 percent, then updated its application and sought an increase of 5.30 percent. After extensive discussions, the parties agreed on an overall decrease of .20 percent.

Declarants for Allstate and the Department in support of the settlement attested to the soundness of the .20 percent rate reduction. Ms. Wehmueller, the Department's Senior Actuary, affirmed this in her declaration. Allstate's Analytics Manager and Actuary, Ms. Hoffman, similarly agreed that the adjustments to the Allstate application numbers leading to the .20 percent decrease applied values producing rates that comply with applicable California statutory standards.

⁵⁰ *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, discussed at pages 8-9, *supra*.

The attorneys involved, Steven H. Frankel and Robert Hoffman of DENTONS US LLP and Daniel Goodell for the Department, relying on consultations with their experts and their own experience in these matters, agreed the settlement was fair, just and reasonable. The attorneys are mature and experienced in these matters, having participated in numerous rate hearings. The parties asserted the negotiations were at arms-length, and there is no suggestion or reason to believe otherwise.

Factors set forth in *Dunk v. Ford* as supporting a presumption of fairness are clearly present. The parties conducted negotiations at “arm’s length,” and no allegation or evidence exists to the contrary. Moreover, in their settlement negotiations, counsel were actively assisted by experienced actuaries and rate analysts.

Other policy reasons supporting settlement are present here. Resolution of the case avoids delays in implementing the rate decrease the parties have agreed upon, and further avoids the possibility of a substantial dollar increase in the costs to California policyholders. The volume of Allstate’s auto premium in California is such that each percent of premium change would amount to more than \$14.7 million (based on 2012 written premium of almost \$1.5 billion). The settlement reduces an original application for a 6.11 percent increase (roughly \$90 million), and replaces it with a decrease of about \$3 million.

The ALJ makes no finding with respect to whether the use of affinity group programs proposed by Allstate is fair or legal under Proposition 103, and this proposed decision should not be construed as a decision on that issue. As suggested by Allstate and the Department, a rulemaking proceeding would be a desirable way of resolving some of the doubts about the affinity programs, since, given the Department’s consistent practice of approving them, a decision in this area could have far-reaching, industry-wide consequences. The many carriers using such programs, and the consumer organizations opposing or seeking to modify them,

should have a full opportunity to be heard in formulating appropriate standards and clarifying regulations, and should not otherwise have the issues resolved in the context of reviewing a stipulated settlement of a single prior approval rate case.

The Department justifies its action in approving the group programs because it has approved many similar programs for other automobile insurers. In this regard the Department's approach is to be "fair" to Allstate in allowing it to use tools legally available to its competitors in the industry.

The Department views Allstate's affinity groups program and attendant rate differentials as lawful under the broad allowance for "group insurance" contained in section 1861.12 of the Insurance Code. Consumer Watchdog argued otherwise. The argument is, however, best left to another day to be presented under more public circumstances when doing so will not deter a signed settlement stipulation that avoids potentially enormous risk to policyholders.

For all the reasons discussed above and based on the facts as set forth in this Proposed Decision and in the declarations submitted without objection, the settlement taken as a whole, including the .20 percent rate decrease, is fundamentally fair, adequate and reasonable.

Accordingly, the ALJ accepts the attached Stipulation and recommends its adoption to the Commissioner. The terms of the Stipulation are adopted as part of this Proposed Decision and are incorporated by reference with the same force and effect as if they were set forth herein.

ORDER

For good cause shown, IT IS ORDERED that, pursuant to the terms of the attached Stipulation and Request for Order:

1. The stipulated overall decrease of .20 percent in Allstate's automobile insurance rates is approved.

2. The parties shall each comply with every term or obligation set forth in the Stipulation and Request for Order attached hereto and incorporated by reference herein.

3. Within such time as the Commissioner may designate in approving the Stipulation, Allstate shall begin issuing policies in accordance with the rate change required by the Stipulation.

4. The Stipulation is a public record under Government Code section 11517(d) and Insurance Code section 1861.07, and it and any orders issued pursuant to it are open to public inspection pursuant to the California Public Records Act (Government Code sections 6250 et. seq.). Discussions, admissions, concessions, or offers to stipulate or settle related to the Stipulation are, however, confidential and inadmissible for any purpose (10 CCR §2656.4(a)).


5. Pursuant to 10 CCR §2656.1(d), the Stipulation has no precedential value for future proceedings.

6. The Commissioner retains jurisdiction to ensure that the parties (1) comply with the provisions and terms of the Stipulation and this Order, and (2) effect fair and proper application of the proposed rate decrease. In all other regards, this matter is closed.

* * *

This proposed decision is based on the entire record in this proceeding, and I recommend its adoption as the decision of the Insurance Commissioner of the State of California.

DATED: November 14, 2013


DAVID R. HARRISON
Administrative Law Judge
California Department of Insurance