

1 Harvey Rosenfield (SBN 123082)
Pamela Pressley (SBN 180362)
2 THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS
3 1750 Ocean Park Blvd., Suite 200
Santa Monica, CA 90405-4938
4 Telephone: (310) 392-0522
Facsimile: (310) 392-8874
5

6 Daniel Y. Zohar, Esq. SBN 177866
Zohar Law Firm, P.C.
7 601 S. Figueroa St., Suite 1700
Los Angeles, CA 90017
8 Telephone: (213) 689-1300
Facsimile: (213) 689-1305
9

10 Attorneys for THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS
11

12 BEFORE THE INSURANCE COMMISSIONER
13 OF THE STATE OF CALIFORNIA
14

15 In the Matter of the Rate Applications of:) FILE NOS.: 06-6029 and 06-6030
16 Allstate Insurance Company and Allstate)
17 Indemnity Company,) **THE FOUNDATION FOR TAXPAYER**
18 Applicants/Respondents.) **AND CONSUMER RIGHTS' PETITION**
19) **FOR HEARING AND PETITION TO**
20) **INTERVENE**
21)

22 The Foundation for Taxpayer and Consumer Rights ("FTCR") hereby requests the
23 Insurance Commissioner to schedule a public hearing on the above-referenced rate applications
24 of Allstate Insurance Company and Allstate Indemnity Company ("Applicants" or "Allstate") at
25 which time the Applicants will be directed to appear and respond to the issues raised in this
26 petition.
27
28

1 In support of its petition, FTCCR alleges:

2 I.

3 THE RATE APPLICATION

4 1. On or about September 1, 2006, the Applicants filed Applications for Approval of
5 Insurance Rates for a 12.2% rate increase with the California Department of Insurance (“CDI”)
6 for their personal lines homeowners multiple peril insurance, File Nos. 06-6029 and 06-6030 (the
7 “rate filings” or “applications”). On September 15, 2006, the public was notified of Applicants’
8 rate filings.

9 II.

10 PETITIONER

11 2. Petitioner FTCCR is a nonprofit, nonpartisan, public interest corporation organized
12 to represent the interests of insurance consumers, particularly as they relate to Proposition 103.

13 3. FTCCR’s founder, Harvey Rosenfield, wrote Proposition 103 and led the successful
14 campaign to have it enacted in 1988.

15 4. FTCCR is supported by contributions from members of the public throughout
16 California, and by foundation grants. Among FTCCR’s supporters are policyholders as well as
17 members of the public throughout the State of California.

18 5. FTCCR is dedicated to the promotion of insurance reform and the protection of the
19 interests of all insurance consumers in matters before the Legislature, the courts, and the CDI.
20 FTCCR’s advocacy work is particularly focused on the enforcement and implementation of
21 Proposition 103, and it acts to defend and enforce the provisions of the initiative and other
22 consumer protection measures enacted for the benefit of consumers and policyholders.

23 6. The staff of FTCCR and the outside persons with whom it consults include some of
24 the nation’s foremost consumer advocates and experts on insurance ratemaking matters.

25 7. FTCCR has served as a public watchdog with regard to insurance rates and insurer
26 rollback liabilities under Proposition 103: monitoring rollback settlements and the status of the
27 rollback regulations, reviewing and challenging rate filings made by insurers seeking rate
28 increases, participating in adjudicatory and rulemaking hearings before the CDI, and educating

1 the public concerning industry underwriting and rating practices and their rights under
2 Proposition 103 and other provisions of state law. FTCCR has also initiated actions in state court
3 and appeared as *amicus curiae* in matters involving the interpretation and application of
4 Proposition 103 and the Insurance Code.

5 8. FTCCR has been permitted to intervene in several proceedings related to the
6 implementation of Proposition 103's reforms. Proceedings in which FTCCR has intervened
7 include: (i) REB-5184, regarding State Farm's rollback liability; (ii) RH-318 and IH-93-3-REB,
8 regarding regulations to implement Insurance Code section 1861.02's provisions on rating
9 factors for personal automobile insurance; (iii) RH-339 and RH-341, regarding procedural rules
10 for rate hearings and for intervention; (iv) PA-95-0057-00 regarding Safeco's Earthquake Rate
11 Application; (v) Consolidated hearing numbers PA-97-0077-00, PA-97-0078-00, and PA-97-
12 007900 regarding State Farm's, Allstate's and Farmers' automobile class plans; (vi) PA-97-
13 0072, regarding the California Earthquake Authority's rate application; (vii) RH-346, regarding
14 regulations governing Advisory Organization Manuals; (viii) IH-97-0017-REB, regarding prior
15 approval regulations, and IH-0017-TF, Prior Approval Task Force; (ix) IH-97-0018-REB III; (x)
16 File No. PA-98-0099-00, regarding Allstate's Private Passenger Automobile Insurance Rate
17 Application; (xi) RH-402, regarding the optional persistency auto rating factor; (xii) RH-
18 01015532, regarding accident verification procedures; (xiii) RH-01018834, regarding auto rating
19 factors weighting methodologies; (xiv) PA-02025379 regarding SCPIE's rate application; (xv)
20 RH-03029826, regarding the automobile insurance rating factors; (xvi) PA-04036735, regarding
21 Medical Protective's 2004 rate application; (xvii) PA04039736, regarding American Casualty's
22 medical malpractice rate application; (xviii) PA04041210, regarding Safeco's 2004 earthquake
23 rate application; (xix) PA05045074, regarding Medical Protective's 2005 medical malpractice
24 insurance rate application; (xx) NC03029253 regarding the rates, rating plans or rating systems
25 of Farmers Insurance Exchange, et al.; (xxi) PA06093080, PA06093079, PA06093078, and
26 PA06092759, regarding the homeowners rates of Safeco, Allstate, Fire Insurance Exchange, and
27 State Farm; among other proceedings. In each of these proceedings that have proceeded to a
28 final decision in the last five years (listed as (xi)-(xvii), and (xix)), the Commissioner found that

1 FTCR made a substantial contribution, meaning that its participation was separate and distinct
2 from any other party and that it presented relevant issues, evidence and arguments that resulted
3 in more credible, non-frivolous information being available to the Commissioner in making his
4 final decision.

5 III.

6 EVIDENCE

7 9. Should the Commissioner grant the requested public hearing, FTCR will present
8 and elicit evidence that the rates proposed in the Applicants' filings are in violation of
9 Proposition 103. Specifically, Insurance Code section 1861.05(a) provides that "[n]o rate shall
10 be approved or remain in effect which is excessive, inadequate, unfairly discriminatory...."
11 Additionally, California Code of Regulations, title 10, section 2644.1, titled "Excessive or
12 Inadequate Rates", provides that "[n]o rate shall be approved or remain in effect that is above the
13 maximum permitted earned premium as defined in section 2644.2."

14 10. Based on FTCR's preliminary analysis of the Applicants' filings, FTCR believes
15 that it will be able to present and elicit evidence at the requested public hearing to show that the
16 rates proposed in the Applicants' filings are excessive and in violation of Insurance Code section
17 1861.05(a) and the prior approval rate regulations, California Code of Regulations, title 10,
18 section 2644.1, *et seq.* At a minimum, FTCR will present and elicit evidence to show that
19 Applicants' use of actuarially unsound methodologies and/or methodologies that differ from the
20 rate regulations in each of the following areas lead to an excessive proposed rate:

- 21 a) Loss development method is inconsistent with regulations;
- 22 b) Loss trend factors are excessive;
- 23 c) State catastrophe factor is excessive and unsupported;
- 24 d) Fire following catastrophe factor is excessive and unsupported;
- 25 e) Provision for reinsurance is not allowed by the regulations, and even if it were, is
26 excessive, unsupported and unwarranted;
- 27 f) Provision for providing reinsurance to the CEA is not allowed by the regulations, and
28 even if it were, is excessive, unsupported and unwarranted;

- 1 g) Provision for contingencies is excessive, unsupported and unwarranted;
- 2 h) Provision for profit is excessive, unsupported and unwarranted;
- 3 i) Target rate of return is excessive;
- 4 j) Federal income tax rate is excessive;
- 5 k) Investment return value is too low; and
- 6 l) Investable reserves value is too low.

7 11. As alleged by the Commissioner in his recent Notice of Hearing and Order to
8 Show Cause Why Respondent's Homeowners' Insurance Rates are Not Excessive and in
9 Violation of Insurance Code Section 1861.05, File No. PA06093079 (hereafter "Notice"), which
10 challenged Allstate's current homeowners rates as excessive, during 2003, Allstate had a rate
11 increase approved and put into effect for its homeowners' insurance line (File Nos. 02-25821 and
12 22) for +6.9%. (Notice, ¶4.) That rate hike followed an approved rate hike by Allstate of
13 +18.5% in 2002 (File Nos. 01-5782 and 83). (Rate Filing, Exhs. 1 and 2.) As further alleged by
14 the Commissioner, Allstate's actual losses have been far less than the 65.54% loss ratio predicted
15 in its 2002 filing. (Notice, ¶5.) The Commissioner alleged that during 2004 and 2005, Allstate's
16 loss ratios calculated by calendar year radically dropped to 31.01%, and 41.20%, respectively.
17 (Notice, ¶7.)¹ At the same time that California homeowners' insurers' loss ratios have been
18 plummeting, they have enjoyed skyrocketing profits, as the premiums earned by the top 20
19 homeowners' insurers in California increased by more than 61% between 2001 and 2005,
20 according to the Commissioner. (Notice, ¶8.) FTCR's analysis reveals that the California
21 Homeowners' Multiple Peril Insurance industry as a whole had operating profits of 38.9% and
22 35.6% in 2004 and 2005, respectively. Allstate's return on surplus nationally was 11.08%,
23 according to the Commissioner. (Notice, ¶11.)

24
25
26
27 ¹ FTCR's review of the California state pages from Allstate's 2004 and 2005 annual statements
28 filed with the CDI reveal loss ratios (calculated as incurred losses to earned premiums) for its
homeowners' multiple peril line of 24.7% and 33.8%, respectively. Even adding in direct
defense and cost containment expenses incurred (DCCE) to losses incurred, the 2004 and 2005
loss and DCCE ratios are still only 26.6% and 36.4%, respectively.

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

V.

INTERVENTION OF FTCCR

18. Insurance Code section 1861.10(a) titled “Consumer Participation” grants “any person” the right to intervene in a proceeding to enforce Proposition 103. Pursuant to section 1861.10(a), FTCCR seeks permission to intervene in the rate review process pertaining to the Applicants’ requested rate increase and the required hearing thereon. FTCCR submits its Petition to Intervene pursuant to California Code of Regulations, title 10, section 2661.3.

19. FTCCR seeks to intervene in this proceeding in the interest of California homeowners and consumers. Although consumer presence in departmental proceedings has a significant impact on policyholders’ rates, the amount for each individual consumer is outweighed by the time and expense of hiring individual counsel or an advocacy group to protect his or her rights. Thus, an independent group like FTCCR with an established history of vigorously protecting the rights of consumers would add a voice that, otherwise, would be absent from these proceedings.

VI.

ATTENDANCE AND PARTICIPATION OF PETITIONER

20. FTCCR, by and through counsel, will be able to attend and participate in the proceeding without delaying the proceeding or any other proceeding before the Commissioner.

VII.

INTENT TO SEEK COMPENSATION

21. Pursuant to California Code of Regulations, title 10, section 2661.3, FTCCR intends to claim compensation for its participation in this matter. FTCCR has attached a preliminary estimated budget of \$400,600 as Exhibit A. FTCCR has based its estimated budget on several factors including: (1) the technical and legal expertise needed to address these issues; (2) its current best estimate of the time needed to participate effectively in these proceedings, taking into account the time already expended by FTCCR staff and an estimate of time needed to complete remaining tasks; and (3) past experience in similar rate proceedings before the CDI.

1 The estimated budget is reasonable and the staffing level is appropriate, given the expertise that
2 FTCR brings to these proceedings when the issues involved are issues at the very core of its
3 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 FTCR reserves the right to
5 amend its proposed budget as its expenses become more certain, or in its request for final
6 compensation. FTCR will give notice of such modifications as soon as practicable after it
7 discovers the need to revise its estimates, and shall comply with the budget revision requirements
8 in the relevant intervenor regulations.

9 22. On July 14, 2006, the Insurance Commissioner found FTCR eligible to seek
10 compensation in departmental proceedings, pursuant to California Code of Regulations, title 10,
11 section 2662.2. This determination is valid for two years and succeeded prior determinations to
12 the same effect issued by the Commissioner on July 2, 2004, June 20, 2002, October 1, 1997,
13 September 26, 1995, September 27, 1994, and September 13, 1993.

14 23. The Commissioner has awarded FTCR compensation for its work on several prior
15 departmental proceedings.

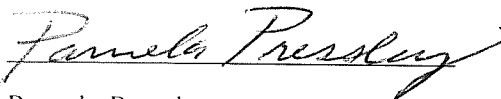
16
17
18 WHEREFORE, FTCR respectfully requests that the Insurance Commissioner hold a
19 hearing on the Applicants' rate filings.

20
21 DATED: September 28, 2006

Respectfully submitted,

22 Harvey Rosenfield
23 Pamela Pressley
24 THE FOUNDATION FOR TAXPAYER AND
CONSUMER RIGHTS

25
26 By:



27 Pamela Pressley
28