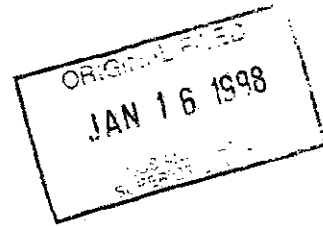


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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

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JOSEPH FALMER,) CASE NO. YC 028529
)
Plaintiff) DECLARATION OF MICHAEL FELDMAN
) IN SUPPORT OF OPPOSITION TO
vs.) MOTIONS FOR SUMMARY JUDGMENT
) BROUGHT BY DEFENDANTS AIS,
MERCURY INSURANCE COMPANY; AUTO) INC., AIS-SANTA MONICA, INC.,
INSURANCE SPECIALIST, INC.; AUTO) AND MERCURY INSURANCE COMPANY
INSURANCE SPECIALIST-SANTA)
MONICA, INC., DOES 1 through) DATE: January 30, 1998
100, inclusive,) TIME: 8:30 a.m.
) DEPT: M
Defendants.) TRIAL: April 21, 1998

I, MICHAEL FELDMAN, declare:

1. The following is based upon my personal knowledge and if called upon as a witness to testify in this matter, I could and would testify competently thereto.

2. During the period of February, 1990 to August, 1995, I worked as a "Producer" for defendants AIS, Inc., and AIS-Santa Monica, Inc. My primary job function was to sell automobile insurance to the general public. The AIS entities served as

1 brokers or agents for various insurance carriers such as Mercury
2 Insurance Company. A very typical scenario was that an insurance
3 applicant would call AIS. A producer would then quote at least
4 one insurance policy. While I worked at AIS, the AIS producer
5 had AIS and Mercury authority to "write" or "bind" Mercury
6 Insurance Company Proposition 103 good driver automobile
7 insurance which means that the producer could contractually
8 commit Mercury to insure the applicant without prior approval
9 from Mercury.

10 3. I sold approximately 7,500 automobile policies at AIS.
11 Soon after starting my employment with the AIS entities, I
12 learned that Proposition 103 directly affected the sale of
13 automobile insurance. I immediately educated myself concerning
14 the qualifications for a good driver discount by reviewing
15 various insurance company underwriting manuals (including
16 Mercury's Underwriting Manual), insurance industry literature and
17 insurance company applications (including Mercury's Application).
18 I also reviewed the law. In determining whether an applicant is
19 entitled to a good driver discount, Proposition 103 essentially
20 required only consideration that the person had been licensed to
21 drive a motor vehicle for the last three years, that he had no
22 more than one violation point over the last three years, and that
23 the driver had been licensed in the united States or Canada for
24 the previous 18 months. The law did not allow consideration of
25 other factors such as diabetes or national origin.

26 4. In early 1995, Mike Heywood, the branch manager of AIS-
27 Santa Monica, Inc., told me that Janet Norris, an Underwriting
28 Manager at Mercury, was unhappy with Joseph Falmer, C. J. Testa

1 and me for writing diabetics, middle easterners, salvaged
2 vehicles, and non-citizen students with Mercury Proposition 103
3 good driver automobile insurance policies. According to Mr.
4 Heywood, Janet Norris threatened that if we continued to write
5 those "poor caliber risks" we would lose our ability to write
6 Mercury business and that AIS-Santa Monica, Inc., could lose its
7 ability to write or sell Mercury policies.

8 5. I estimate that I had approximately 10 additional
9 conversations with Mr. Heywood from approximately the middle of
10 1994 until the spring of 1995 concerning not writing the
11 aforementioned "poor caliber risks." Two of those conversations
12 occurred in early 1995 where Mr. Heywood again specifically
13 mentioned that Mercury had communicated that Joseph Falmer and I
14 could not write the aforementioned poor caliber risks for any
15 Mercury policy.

16 6. On or about September 27, 1994, Mike Heywood
17 communicated to me that he had just returned from a meeting with
18 Janet Norris at Mercury's underwriting branch in Brea. Mr.
19 Heywood stated that Janet Norris and Julie Harris (a Mercury
20 Underwriting Manager) had requested his attendance. According to
21 Mr. Heywood, Ms. Norris and Ms. Harris directed Mr. Heywood to
22 instruct me that I could not write "poor caliber risks" such as
23 diabetics, salvaged cars or middle easterners for any Mercury
24 insurance policies, including Proposition 103 good driver
25 policies. Mr. Heywood threatened that I could lose my ability to
26 write Mercury and in turn lose my job at AIS if I continued
27 writing those risks with Mercury policies. Mr. Heywood generated
28 a memorandum of this meeting which was placed in my personnel

1 file. A true and correct copy of said memorandum is attached
2 hereto as Exhibit "1."

3 7. On December 8, 1994, I attended a meeting with Mike
4 Heywood, James Caird (President of AIS, Inc.) and Jerry Baker
5 (Vice President of AIS, Inc.) in Mr. Caird's office. They
6 informed me that Mercury had requested that AIS management meet
7 with me and that Mercury had again complained that I had written
8 the same "poor caliber risks." In that meeting, Messrs. Baker
9 and Caird said that I had been previously warned about writing
10 diabetics and middle easterners. With regard to middle
11 easterners, they stated that if I could not pronounce a name, I
12 should not write that person. They stated that I could lose my
13 job if I wrote another "poor caliber risk" with Mercury.

14 8. Between February, 1995 and July, 1995, Bente Hileman,
15 the underwriting Manger at AIS-Santa Monica, Inc., and I had four
16 to five conversations wherein Ms. Hileman stated that Mercury
17 complained to her that Mercury was very unhappy with Joseph
18 Falmer binding the same poor caliber risks. Ms. Hileman's duties
19 included training and supervising underwriters. She reviewed all
20 Mercury applications before the applications were submitted to
21 Mercury. She called Mercury for approval of applications.
22 Specifically, Ms. Hileman stated at least twice to me that
23 Mercury had complained that Mr. Falmer had written diabetics.
24 Ms. Hileman stated to me at least once that Mercury had
25 complained that Mr. Falmer had written middle easterners.
26 Approximately once or twice, Ms. Hileman stated to me that Janet
27 Norris had made similar additional complaints about Mr. Falmer.
28 Ms. Hileman stated that the Mercury appointment was in jeopardy

1 because AIS producers writing poor caliber risks, including those
2 written by Mr. Falmer and me. Ms. Hileman's point was clear: the
3 writing of poor caliber risks with Mercury insurance, although
4 legal and required by law, had jeopardized AIS' ability to sell
5 Mercury automobile insurance policies.

6 9. In or about June, 1995, there were two incidents where
7 Patrick Napolitano told me that C. J. Testa, Joseph Falmer and I
8 were jeopardizing our jobs because we had written Proposition 103
9 good driver risks that had violated Mercury's guidelines.

10 10. In or about June and July, 1995, Patrick Napolitano
11 twice told me that he had just spoken with Janet Norris and that
12 C. J. Testa, Joseph Falmer and I "were on thin ice with Mercury"
13 for writing Proposition 103 good driver risks that had violated
14 Mercury's guidelines.

15 11. In the late spring or early summer of 1995, AIS
16 conducted a producer meeting. Joseph Falmer, the other producers
17 and I were present. During that meeting, Patrick Napolitano and
18 Bente Hileman stated that Mercury had threatened to terminate
19 AIS' appointment with Mercury. Mr. Napolitano and Ms. Hileman
20 explained that Mercury complained that AIS producers had bound
21 Proposition 103 good drivers who were diabetics or middle
22 easterners. According to Mr. Napolitano and Ms. Hileman, Mercury
23 was angry because once AIS bound those applicants, Mercury had to
24 issue insurance. Mr. Napolitano and Ms. Hileman instructed that
25 we could not quote Mercury insurance to any of those categories
26 of applicants.

27 12. Craig Shrednick was Renewal Manager at AIS-Santa
28 Monica, Inc. He was in charge of renewal policies. At least

1 twice, he stated to me that Mercury was very unhappy with Joseph
2 Falmer's good driver applicants that he had written.

3 13. Between January, 1994 to June, 1995, I participated in
4 approximately five meetings with Stacy Berkman, a Mercury Field
5 Marketing Representative. During those meetings, Ms. Berkman
6 complained that I had improperly written good driver policies for
7 diabetics, non-citizen students and other classes. She warned
8 that I was not to write any such applicants. During one of those
9 meetings, I communicated that her instructions were unfair since
10 other AIS producers were writing the same risks. I specifically
11 named Joseph Falmer. Ms. Berkman acknowledged her
12 dissatisfaction with Mr. Falmer and responded that she would deal
13 with him as well.

14 14. Based upon the foregoing, I was told numerous times by
15 AIS management that I would be terminated if I continued to write
16 the aforementioned risks even if the applicants were Proposition
17 103 good drivers. AIS management further made it clear that
18 Mercury had threatened to terminate our ability to sell Mercury
19 policies.

20 15. On numerous occasions, I protested to AIS and Mercury
21 that I was asked to violate Proposition 103 and discriminate
22 against various categories of persons. The response from AIS and
23 Mercury invariably was that I was to follow Mercury's
24 instructions not to provide good driver insurance to the
25 aforementioned "poor caliber risks."

26 16. Throughout the entire time that I worked at AIS,
27 approximately 75% to 80% of the policies I sold were Mercury
28 products. At least 95% of the good driver polices I sold were

by avoiding risks that other companies have to take

1 Mercury products. The high proportion of Mercury sales was due
2 to the fact that the Mercury policies almost always charged the
3 lowest premiums. Furthermore, AIS Management always encouraged
4 the producers to sell Mercury products except under the
5 circumstances discussed herein.

6 17. Given that Mercury was the most competitive product
7 sold by AIS, a producer could not earn a living at AIS without
8 the ability to sell Mercury products.

9 18. Throughout the entire time that I worked at AIS, AIS
10 management made it clear to me and to the other producers that
11 Mercury was its most important carrier. AIS made it clear that
12 Mercury's instructions must be followed even if the instructions
13 required AIS producers to violate Proposition 103.

14 I declare under penalty of perjury under the laws of the
15 State of California that the foregoing is true and correct.

16 Executed this 14th day of January, 1998, at Los Angeles,
17 California.


MICHAEL FELDMAN

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9/27/94

Re: Miller Feldman

Told Feldman again not
to call or agree with
any Mercury used. rgr.

Told him that if he and
underwriter didn't agree, to
come to sue or settle &
if we felt it appropriate,
we'd call Janet Norris.

also, I told Miller that
he could lose his
ability to either call
Mercury or even to
be able to bind Mercury
rights. Asked him to be
careful re MC risk

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mercury
into the good graces?

2.
I told Miles he may well
lose his ability to
produce mercury business
if he kept abusing
their env. guidelines
(salvaged cars, poor
caliber rods, dials, etc.), and that
without mercury, his
ability to produce business
would be greatly impaired.

Hyuon

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