

1 COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
2 JOHN J. STOIA, JR. (141757)
THEODORE J. PINTAR (131372)
3 655 West Broadway, Suite 1900
San Diego, CA 92101
4 Telephone: 619/231-1058
619/231-7423 (fax)

5 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
6 ANDREW S. FRIEDMAN
7 2901 N. Central Avenue
Suite 1000
8 Phoenix, AZ 85012
Telephone: 602/274-1100
9 602/274-1199 (fax)

10 ROGER BROWN AND ASSOCIATES
JAY ANGOFF, OF COUNSEL
11 216 East McCarty Street
Jefferson City, MO 65101-3313
12 Telephone: 573/634-8501
573/634-7679 (fax)

THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS
HARVEY ROSENFELD (123082)
PAMEL PRESSLEY (180362)
1750 Ocean Park Blvd., Suite 200
Santa Monica, CA 90405
Telephone: 310/392-0522
310/392-8874 (fax)

15 Attorneys for Plaintiff Lisa Karnan

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES

18 LISA KARNAN, on Behalf of Herself and all)
19 Others Similarly Situated,)
20 Plaintiff,)
21 vs.)
22 SAFECO INSURANCE COMPANY OF)
AMERICA, a Corporation,)
23 FIRST NATIONAL INSURANCE)
COMPANY OF AMERICA, a Corporation and)
24 DOES 1 through 50, inclusive,,)
25 Defendants)

Case No. BC266219
CLASS ACTION
Assigned to: Judge Anthony J. Mohr
FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF CALIFORNIA BUSINESS
& PROFESSIONS CODE SECTION 17200,
ET SEQ.
DATE: N/A
TIME: N/A
DEPT: 309
DATE ACTION FILED: 01/11/02

1 Plaintiff Lisa Karnan, by her attorneys, brings this action on behalf of herself and all other
2 similarly situated insureds of SAFECO Insurance Company of America (“SAFECO Insurance”), First
3 National Insurance Company of America (“First National”) and Does 1 through 50 (collectively,
4 “SAFECO” or “defendants”). Plaintiff makes the following allegations on knowledge, information and
5 belief, formed after an inquiry reasonable under the circumstances:

6 **NATURE OF ACTION AND WRONGFUL CONDUCT**

7 1. Plaintiff brings this action on behalf of herself and a class consisting of others, who
8 purchased automobile insurance through defendants and who were surcharged based on a lack of prior
9 or continuous coverage. Plaintiff seeks injunctive relief, restitution, disgorgement and the imposition of
10 a constructive trust under Cal. Bus. & Prof. Code §17200, *et seq.*

11 2. Plaintiff seeks redress from defendants’ unlawful, unfair and deceptive business practice
12 of approving underwriting and issuing automobile insurance policies in which either: (a) the absence of
13 prior automobile insurance coverage; or (b) the lack of continuous automobile insurance coverage is
14 unlawfully used as a rating factor to increase the amount of insurance premiums paid by California
15 consumers.

16 3. Use of either the absence of prior coverage or the lack of continuous coverage as a rating
17 factor for purposes of increasing the amount of automobile insurance premiums violates
18 Proposition 103. Proposition 103, codified at Ins. Code §1861.01, *et seq.*, was passed by the voters of
19 California in November 1988 to change certain industry underwriting and rating practices and to
20 provide for a “Good Driver Discount.” SAFECO’s underwriting and rating practices violate Ins. Code
21 §1861.02, subs. (a), (b) and (c), and also have the effect of making financial responsibility a
22 requirement for issuing automobile insurance coverage. By failing to report its true underwriting and
23 rating practices to the California Department of Insurance (“CDI”), SAFECO also violates Ins. Code
24 §1859.

1 **Section 1861.02(a)**

2 4. Insurance Code §1861.02(a) sets forth the factors insurers “shall” use in rating
3 automobile insurance in California.¹ Section 1861.02, subs. (a)(1)-(3) require insurers to use the
4 insured’s: (a) driving safety record, (b) mileage driven annually, and (c) years of driving experience.
5 Section 1861.02(a)(4) authorizes the Commissioner of the California Department of Insurance to adopt
6 by regulation additional rating factors which have a substantial relationship to the risk of loss. Pursuant
7 to § 1861.02(a)(4), the Commissioner has adopted certain additional rating factors, which are codified
8 at Cal. Code Regs., tit. 10, §2632.5.² SAFECO violates Ins. Code §1861.02(a) because it improperly
9 uses both the absence of prior coverage and the length of continuous coverage to determine premiums,
10 neither of which are included as authorized rating factors under either Ins. Code §1861.02(a) or Cal.
11 Code Regs., tit.10, §2632.5.³

12
13
14 ¹ Section 1861.02(a) states:

15 (a) Rates and premiums for an automobile insurance policy, as described in
16 subdivision (a) of Section 660, shall be determined by application of the following
factors in decreasing order of importance:

- 17 (1) The insured’s driver safety record.
18 (2) The number of miles he or she drives annually.
19 (3) The number of years of driving experience the insured has had.

20 (4) Such other factors as the commissioner may adopt by regulation that
21 have a substantial relationship to the risk of loss. The regulations shall set forth the
22 respective weight to be given each factor in determining automobile rates and
premiums. Notwithstanding any other provision of law, the use of any criterion without
such approval shall constitute unfair discrimination.

23 ² One of the “optional” rating factors under Cal. Code Regs., tit. 10, §2632.5 is “persistence.” In
24 its Class Plans and Rating Manuals submitted to the CDI, SAFECO provides a “persistence discount”
25 for those SAFECO insureds who have maintained continuous automobile coverage with SAFECO
26 Insurance or First National and/or who have homeowners or other insurance coverage with SAFECO.
SAFECO’s improper use of the lack of continuous coverage as a rating factor is different than
“persistence” because SAFECO evaluates the discontinuity of coverage with any insurer, not just
SAFECO or First National.

27 ³ Use of the absence of prior coverage also violates Ins. Code §1861.02(c). See ¶7, below.
28

1 **Section 1861.02(b)**

2 5. In addition to violating Ins. Code §1861.02(a), SAFECO's practice of using a
3 consumer's absence of prior coverage, or lack of continuous coverage as rating factors to increase
4 premiums also violates §1861.02(b).

5 6. Insurance Code §1861.02(b)(1) provides, *inter alia*, that all persons who meet specified
6 criteria set forth in §1861.025 "shall be qualified to purchase a Good Driver Discount policy from the
7 insurer of his or her choice." Section 1861.025 does not require an insured to have had prior
8 automobile insurance coverage or continuous automobile insurance coverage in order to qualify for a
9 Good Driver Discount. Section 1861.02(b)(2) provides that the "rate charged for a Good Driver
10 Discount policy shall . . . be at least 20% below the rate the insured would have been charged for the
11 same coverage." By improperly increasing premiums to consumers who are eligible for the Good
12 Driver Discount but who do not have a record of prior coverage or continuous coverage, SAFECO
13 violates §1861.02, subs. (b)(1) and (b)(2), as well as §1861.02(a).

14 **Section 1861.02(c)**

15 7. SAFECO also violates Ins. Code §1861.02(c) by improperly using the consumer's
16 absence of prior automobile insurance coverage as a rating factor to increase insurance premiums.
17 Addressing the pre-1988 industry practice of using the absence of prior automobile insurance coverage
18 as a rating factor, §1861.02(c) provides that "[t]he absence of prior automobile insurance coverage, in
19 and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or
20 generally for automobile rates, premiums or insurability." Therefore, SAFECO also violates
21 §1861.02(c) by improperly using the absence of prior insurance as a rating factor to increase insurance
22 premiums and to prevent an otherwise qualified insured from receiving a Good Driver Discount.

23 **Section 1859**

24 8. SAFECO knowingly and actively conceals its violations of Ins. Code §1861.02 from the
25 CDI, from its sales and agency force and from California consumers in direct violation of Ins. Code
26 §1859. That provision states:

27
28

1 No person, insurer or organization shall wilfully withhold information from, or
2 knowingly give false or misleading information to, the commissioner or to any rating
3 organization, advisory organization, insurer or group, association or other organization
of insurers, which will affect the rates, rating systems or premiums for the classes of
insurance to which the provisions of this chapter are applicable.

4 9. In its submissions to the Commissioner, including its Class Plan and Ratings Manuals,
5 SAFECO violates Ins. Code §1859 by failing to disclose its practice of using the absence of prior
6 automobile insurance coverage or the lack of continuous coverage as criteria for determining premiums,
7 eligibility for insurance and eligibility for the Good Driver Discount. Because SAFECO knowingly and
8 actively withholds material information concerning its actual underwriting and rating practices, as well
9 as related violations of law described above, plaintiff and the general public of the State of California
10 were likewise all unaware that SAFECO's underwriting practices were unlawful. Plaintiff and the
11 general public could not have reasonably discovered SAFECO's violations of law due to SAFECO's
12 knowing and active concealment of the illegal nature of its wrongful underwriting practices.

13 10. SAFECO engages in a uniform and systematic course of conduct and deceptive practice
14 which deprives California consumers who do not have a history of prior or continuous automobile
15 insurance coverage of the benefits of Proposition 103, including qualification for the Good Driver
16 Discount, by improperly increasing their automobile insurance premiums. Plaintiff is informed and
17 believes, and based thereon alleges, that this premium increase or surcharge is part of a policy
18 implemented by SAFECO to circumvent the law prohibiting insurance carriers from considering a
19 person's prior insurance coverage as a factor in determining premiums or eligibility for insurance.

20 11. This action seeks redress and equitable relief for the common course of conduct and
21 deceptive practices implemented by SAFECO to underwrite and issue automobile insurance in violation
22 of Ins. Code §§1859 and 1861.02. The general public unwittingly purchased automobile insurance
23 from SAFECO based on this practice, paid (and continue to pay) inflated premiums and/or surcharges
24 in excess of 20% of what they otherwise qualified for under law and were harmed thereby.

25 **JURISDICTION AND VENUE**

26 12. This Court has jurisdiction over all causes of action asserted herein pursuant to the
27 California Constitution, Article VI, §10, because this case is a cause not given by statute to other trial
28 courts.

1 mentioned a business enterprise engaged in the business of writing automobile insurance and is doing
2 business in the County of Los Angeles, in the State of California.

3 18. The true names and capacities of the defendants sued herein as Does 1 through 50 are
4 presently unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend
5 this Complaint to allege the true names and capacities of these defendants when they have been
6 determined. Each of the fictitiously named defendants is responsible in some manner for the conduct
7 alleged herein. The Doe defendants are private individuals, associations, partnerships, corporations or
8 institutions who participated in the wrongful conduct alleged herein in ways which are unknown to
9 plaintiff at this time. Some or all of the Doe defendants may be residents of the State of California.

10 **DEFENDANTS' CONCEALMENT OF THEIR ILLEGAL PRACTICES**

11 19. In its submissions to the Commissioner, including its Class Plan and Ratings Manuals,
12 SAFECO fails to disclose its practice of using the absence of prior automobile insurance coverage or
13 the lack of at least one year of continuous coverage as criteria for determining premiums, eligibility for
14 insurance and eligibility for the Good Driver Discount. Because SAFECO knowingly and actively
15 withholds this material information concerning its determination of premiums, as well as the related
16 violations of law described above, plaintiff and the Class were likewise all unaware that SAFECO's
17 practices were unlawful. Plaintiff and the general public could not have reasonably discovered
18 SAFECO's violations of law due to SAFECO's knowing and active concealment of the illegal nature of
19 its wrongful underwriting practices.

20 20. Plaintiff and the Class were unaware of SAFECO's violations of law and that SAFECO
21 had knowingly failed to disclose material information regarding its premium calculations practices,
22 Plaintiff and the Class reasonably relied on the regulatory approval process and other relevant
23 representations, and also relied on information provided by SAFECO, without having knowledge of
24 SAFECO's omissions and acted on them to their detriment by (a) purchasing reduced automobile
25 insurance coverage from SAFECO; and (b) paying the improper and inflated premiums on that
26 insurance. Plaintiff and the Class were unaware of SAFECO's material misrepresentations and
27 nondisclosures, and could not have discovered them through reasonable diligence as a result of
28 SAFECO's conduct in fraudulently and actively concealing their wrongdoing.

1 (iii) Whether defendants violated Ins. Code §1861.02(c) by improperly using
2 Class members' absence of prior automobile insurance coverage as a rating factor to increase insurance
3 premiums;

4 (iv) Whether defendants utilize rating factors that are not permitted by law
5 under Cal. Ins. Code §1861.02(c) or Cal. Code Reqs., tit. 10 §2632.5;

6 (v) Whether defendants' filings with the California Department of Insurance
7 disclose their use of the factors complained of herein; and

8 (vi) Whether defendants' systematic acts and practices as alleged herein
9 violated Cal. Bus. & Prof. Code §17200.

10 (c) Plaintiff is asserting claims that are typical of the claims of the Class as a whole,
11 because plaintiff (i) was required to submit information about her prior and/or continuous automobile
12 insurance from SAFECO in order to obtain an insurance quotation from defendants, and (ii) was in fact
13 charged higher premiums based on her answers to questions about her prior and/or continuous
14 automobile insurance coverage.

15 (d) Plaintiff will fairly and adequately represent and protect the interests of the Class
16 in that she has no disabling conflicts of interest that would be antagonistic to those of the other Class
17 members. Plaintiff has retained counsel who are competent and experienced in the prosecution of class
18 action litigation.

19 (e) A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy for at least the following reasons:

21 (i) Given the size of individual Class members' claims, few, if any, Class
22 members could afford to seek legal redress individually for the wrongs SAFECO committed against
23 them;

24 (ii) When the liability of SAFECO has been adjudicated, claims of all Class
25 members can be determined by the Court;

26 (iii) This action will cause an orderly and expeditious administration of the
27 Class claims, economies of time, effort and expense will be fostered, and uniformity of decisions will
28 be insured;

1 (iv) Without a class action, the Class members will continue to suffer
2 damages, and SAFECO's violations of law will proceed without remedy while defendants continue to
3 reap and retain the substantial proceeds of their wrongful conduct; and

4 (v) This action presents no difficulties that would impede its management by
5 the Court as a class action.

6 25. Plaintiff and other Class members have all similarly suffered irreparable harm and
7 damages as a result of defendants' unlawful and wrongful conduct. Defendants' systematic application
8 intake process was applied to all Class members and makes class treatment especially appropriate. The
9 production of Class members' applications for insurance will corroborate plaintiff's claims and
10 demonstrate the breadth of defendants' wrongful practices. This action will provide substantial benefits,
11 to both the Class and the public since, absent this action, defendants' unlawful conduct will continue
12 unremedied and uncorrected.

13 CAUSE OF ACTION

14 **Unlawful, Fraudulent and Unfair Business Acts and Practices in Violation of** 15 **California Business and Professions Code Sections 17200, et seq.**

16 26. Plaintiff repeats and realleges all of the allegations contained in the previous paragraphs
17 in this Complaint as though said allegations were set forth in full herein.

18 27. Cal. Bus. & Prof. Code §§17200, et seq., prohibits acts of unfair competition, which
19 mean and include any "unlawful, unfair or fraudulent business act or practice."

20 28. Defendants' practices are unlawful because they violate Ins. Code §§1859 and 1861.02.
21 Defendants' practices are unfair because their conduct threatens or harms competition in the automobile
22 insurance marketplace. Defendants' practices are fraudulent because defendants deceived plaintiff and
23 the Class by withholding material information concerning its use of the absence of prior or continuous
24 coverage in the underwriting process from the CDI (by failing to include all rating factors it uses in its
25 Class Plan and Rating Manuals) and in applications to the consuming public. This conduct is ongoing
26 and continues to this date.

27 29. As more fully described above, defendants' deceptive practices and common course of
28 conduct that cause an increased premium or surcharge to be applied to consumers who do not have

1 previous or maintain continuous automobile insurance coverage immediately before purchase
2 constitutes an unfair business act or practice within the meaning of Cal. Bus. & Prof. Code §17200,
3 *et seq.*, that the justification for defendants' conduct is outweighed by the gravity of the consequences to
4 the general public. Such conduct is also contrary to public policy and is immoral, unethical, oppressive,
5 unscrupulous or substantially injurious to consumers. Such conduct is ongoing and continues to this
6 date.

7 30. Plaintiff and the Class have suffered injury in fact and lost money or property as a result
8 of the unfair competition . Plaintiff and the Class are therefore entitled to the relief available under Cal.
9 Bus. & Prof. Code §17200, *et seq.*, as detailed below.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, plaintiff, on behalf of the Class, prays for judgment and relief against
12 defendants as follows:

13 A. Plaintiff seeks an order of this Court: (1) ordering defendants to cease immediately all
14 acts of unfair competition; (2) enjoining defendants from conducting their businesses through the
15 unlawful, unfair or fraudulent business acts and practices as described in this Complaint; and
16 (3) enjoining defendants from engaging in untrue and misleading practices as described in this
17 Complaint.

18 B. Plaintiff also seeks an order of the Court requiring defendants to disgorge all monies
19 wrongfully obtained as a result of the wrongdoing alleged in this Complaint, including all revenues and
20 profits derived by defendants as a result of the unlawful, unfair or fraudulent business acts or practices
21 and untrue and misleading advertising as alleged above.

22 C. Plaintiff also seeks an order imposing a constructive trust upon defendants' ill-gotten
23 monies and freezing defendants' assets traceable to such conduct.

24 D. Plaintiff also seeks an order of the Court requiring defendants to pay restitution to restore
25 to Class members all funds acquired by means of any act or practice declared by this Court to be an
26 unlawful, unfair or fraudulent business act or practice in violation of applicable laws, statutes or
27 regulations or constituting unfair competition or defendants' acts of untrue or misleading practices, as
28 such money rightfully belongs to the persons who were overcharged.

- 1 E. Reasonable costs of suit and attorneys' fees.
2 F. Pre-and post-judgment interest.
3 G. Such other and further relief as the Court may deem necessary, proper and/or
4 appropriate.

5 DATED: October 31, 2007

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
JOHN J. STOIA, JR.
THEODORE J. PINTAR



THEODORE J. PINTAR
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ANDREW S. FRIEDMAN
2901 N. Central Avenue
Suite 1000
Phoenix, AZ 85012
Telephone: 602/274-1100
602/274-1199 (fax)

ROGER BROWN AND ASSOCIATES
JAY ANGOFF, OF COUNSEL
216 East McCarty Street
Jefferson City, MO 65101-3313
Telephone: 573/634-8501
573/634-7679 (fax)

THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS
HARVEY ROSENFELD (123082)
1750 Ocean Park Blvd., Suite 200
Santa Monica, CA 90405
Telephone: 310/392-0522
310/392-8874 (fax)
Attorneys for Plaintiff

27 S:\CptDraft\Insurance\Cpt Safeco Class Prop 103.doc

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

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on October 31, 2007, declarant served the FIRST AMENDED COMPLAINT FOR VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200, ET SEQ. by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of October, 2007, at San Diego, California.



HEATHER S. BROWN

SAFECO - PROP 103

Service List - 10/31/2007 (202-014)

Page 1 of 1

Counsel For Defendant(s)

Steven H. Weinstein
Barger & Wolen LLP
633 West Fifth Street, Suite 4700
Los Angeles, CA 90071
213/680-2800
213/614-7399(Fax)

Counsel For Plaintiff(s)

Andrew S. Friedman
Edward O. Comitz
Bonnett, Fairbourn, Friedman & Balint, P.C.
2901 N. Central Avenue, Suite 1000
Phoenix, AZ 85012
602/274-1100
602/274-1199(Fax)

John J. Stoia, Jr.
Theodore J. Pintar
Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423(Fax)

Jay Angoff
Roger G. Brown and Associates
216 E. McCarty Street
Jefferson City, MO 65101-3313
573/634-8501
573/634-7679(Fax)