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UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

OCEANSIDE LAUNDRY, LLC dba  
CAMPUS LAUNDRY,

Appellant,

vs.

CALIFORNIA INSURANCE COMPANY;  
APPLIED UNDERWRITERS CAPTIVE  
RISK ASSURANCE COMPANY, INC.,

Respondents.

) File No.: AHB-WCA-17-41  
) Assigned to the Hon. ALJ Clarke de Maigret  
)  
) **RESPONDENTS CALIFORNIA**  
) **INSURANCE COMPANY AND APPLIED**  
) **UNDERWRITERS CAPTIVE RISK**  
) **ASSURANCE COMPANY, INC.’**  
) **PETITION FOR RECONSIDERATION**  
) **OF THE INSURANCE**  
) **COMMISSIONER’S DECISION**  
)  
) Evidentiary Hearing: December 20, 2018  
)

Respondents California Insurance Company (“CIC”) and Applied Underwriters Captive Risk Assurance Company, Inc. (“AUCRA”) (and collectively, “Respondents”) respectfully submit this Petition for Reconsideration of the Insurance Commissioner’s (the “Commissioner”) May 8, 2019 Decision and Order (the “Decision”) related to the administrative appeal by Appellant Oceanside Laundry, LLC (“Oceanside”).

**I. INTRODUCTION**

Oceanside should be ordered to pay the full amount due under CIC’s guaranteed cost policies (the “CIC Policies”), as CIC requested, in the alternative, before the Administrative Law Judge (“ALJ”). The Decision does not even mention that CIC requested this relief. This fact is not included in the Decision’s statement of facts or descriptions of the relief requested by both sides. The ALJ treated CIC’s request as though it never were made.

In this Insurance Code section 11737 administrative appeal, the ALJ and Commissioner are charged with identifying the appropriate rating system and applying that system. The Decision holds that the CIC’s filed rates are the only applicable rating system and acknowledges that there was no allegation in the appeal that any portion of the CIC Policies is unlawful. Decision at 36. Having voided the Reinsurance Participation Agreement (“RPA”) and “severed” it from the policies, the ALJ must apply the only rating system the ALJ has recognized – CIC’s filed rates. The ALJ had no legal basis for failing to do so.

By invoking these proceedings, Oceanside asked for the Commissioner’s determination about the manner in which CIC’s rating system should be applied. Because there is no dispute about the legality or enforceability of CIC’s rates, those rates must be enforced. The amount due under the CIC Policies is undisputed – Oceanside owes \$207,195. The Decision should be revised to require Oceanside to pay CIC that amount.<sup>1</sup>

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<sup>1</sup> Respondents disagree with the Decision’s conclusions that the RPA and its rates are void and unenforceable and intend to challenge those rulings through a writ of mandamus. The fact that this Petition does not address certain issues is not a waiver of any arguments or defenses, including those related to the RPA’s enforceability. The purpose of this Petition is not to reargue the Decision’s findings but to request that the Commissioner address an open and undecided

## **II. DISCUSSION**

### **A. The Appeal, CIC's Demand for Payment of Premium, and the Decision's Failure to Acknowledge CIC's Request for Relief**

The ALJ's and Commissioner's jurisdiction in these proceedings is limited to disputes concerning "the manner in which the rating system has been applied in connection with the insurance afforded or offered." Ins. Code § 11737(f). In short, the ALJ and the Commissioner have jurisdiction to determine the appropriate rating system and then apply it.

The crux of this appeal is Oceanside's claim that CIC and AUCRA misapplied the rates in the CIC Policies. In initiating its appeal, Oceanside alleged that the dispute was over the use of the EquityComp® program (the "Program") by CIC and AUCRA to "inflate premiums charged to Appellant far beyond levels appropriate to guaranteed cost policies." Appeal of Decision ("Appeal") at 1:25-26. Oceanside maintained that RPA is illegal and void because it "alters the rating plan under the CIC policies" and substituted a "sliding premium scale" in place of the guaranteed cost premium. Appeal at 3:6. The appeal then identified as a key issue the "difference in the cost to the insured through the RPA [rather] than under the guaranteed cost policy issued by CIC." Appeal at 5:21-22.

CIC and AUCRA opposed Oceanside's claims, contending that the RPA and CIC Policies are separate and independent contracts and that one agreement does not modify the other. Respondents argued that, as a result, the RPA is not a "rate" or "supplemental rate information" to which workers' compensation rate filing requirements apply and that, in any event, unfiled rates are enforceable.

CIC requested, in the alternative, that, if the RPA were declared void, that Oceanside be ordered to pay the full premium due under the CIC Policies. Post Hearing Brief at 38-39; Reply Brief at 5-6. As requested in post-hearing briefing:

[I]f the ALJ were to conclude that the RPA is void as an unfiled rate or form, then CIC's rates should be enforced consistent with

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issue – CIC's demand for relief, in the alternative, that Oceanside pay the full premium due under the CIC Policies.

the Commissioner's ruling in the Shasta Linen Decision. Because there is no evidence that CIC misapplied its filed rating system in calculating the premium due under the CIC Policies, the ALJ should issue an order requiring Oceanside to pay CIC \$207,195 in outstanding premium.

Reply at 6. The Decision contained a statement of case and described the case's procedural background. Decision at 1-5. Yet, nowhere in the Decision does the ALJ mention that CIC requested that Oceanside pay the outstanding premiums due under CIC Policies.

The ALJ held that the RPA was void and unenforceable as an alleged unfiled rate and "severed" the RPA from the CIC Policies. Though the RPA was voided, the ALJ noted that there is no allegation in this appeal that "any portion of the guaranteed cost policies is unlawful" or that the policies are "unenforceable on any grounds within the Commissioner's jurisdiction under Insurance Code section 11737, subdivision (f)." *Id.* Because there was no finding that the CIC's rates are unenforceable on any grounds within the Commissioner's jurisdiction, for the purposes of this section 11737 administrative appeal, CIC's rates are legal and enforceable.

**B. By Ignoring CIC's Request for Relief, the ALJ Denied CIC Due Process and a Fair Hearing**

A central component of due process is the right to be heard and participate in proceedings on an equal footing with one's adversary. *See People v. Ramirez*, 25 Cal. 3d 260, 269 (1979). The California Constitution recognizes the "dignitary interest" in enabling parties to present "their side of the story before a responsible government official." *Id.* There is an "important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society." *Edward W. v. Lamkins*, 99 Cal. App. 4th 516, 539 (2002).

As noted in Respondents' briefing, the ALJ denied Respondents due process by precluding discovery and preventing Respondents from presenting relevant evidence and testimony. *See, e.g.*, Post Hearing Brief at 24-28. The ALJ's failure to acknowledge CIC's claim for premium compounded the fundamental unfairness of these proceedings with respect to Respondents. By ignoring CIC's request as though it never were made and addressing only

Oceanside's relief, the ALJ deprived CIC of the right to be treated as an equal participant in these proceedings.

**C. Public Policy Requires that CIC's Rates be Enforced**

Disregarding Oceanside's premium obligations under the CIC Policies also undermines the very public policies the Decision and the Commissioner's prior precedential *Shasta Linen* Decision claim to be upholding. In voiding Oceanside's RPA, the ALJ reasoned that the filing requirement was not a mere "technical violation" but an integral component in meeting the "main goal" of California's workers' compensation framework – to "protect the state's workforce by ensuring benefits are available to those injured or sickened in the course of their employment." Decision at 23. According to the Decision, "the filing requirement ensures the Commissioner has the rate information necessary to determine that insurers charge amounts that are not discriminatory, not monopolistic, cover their losses and expenses, and do not threaten their solvency." *Id.* These important public policies would be completely undermined, of course, if employers were not required to pay the actual premium due under a policy's filed rates.

The *Shasta Linen* Decision relied upon the same public policy rationale and expressly held that "[n]o other rate is applicable except for those filed by CIC" and that the employer "remains liable" to CIC and should pay "the appropriate insurance premium based upon the filed rates." *Shasta Linen* at 49, 68. The Commissioner designated the decision as precedential for the purpose of administrative proceedings, and, through exclusionary orders, the ALJ held that *Shasta Linen's* legal and factual determinations are binding in these proceedings. The Decision mirrors *Shasta Linen's* determinations and thus should also include *Shasta Linen's* holding that the employer remains liable for the CIC premiums based upon the filed rates. The ALJ had no justification for disregarding this holding in Commissioner's precedential *Shasta Linen* decision.

In this case, as in *Shasta Linen*, the ALJ determined that the CIC's filed rates are the only applicable rates and held that there was no basis to conclude that those rates are illegal or unenforceable on grounds within the Commissioner's jurisdiction. Decision at 36 & n.195. In light of these findings, and in line with the *Shasta Linen* decision, CIC's rating system must be

enforced. In fairly applying a rating system consistent with the public policies behind the workers' compensation laws, the Commissioner may not enforce rates only in one direction – that is, where the employer allegedly overpaid. If an employer has underpaid according to the applicable rates, the workers' compensation framework and public policy require that employer to pay the full premium due.

Oceanside has argued that the CIC Policies' rates are not binding because there was no "mutuality" or "meeting of the minds" with respect to those rates. That argument is irrelevant for the purposes of these proceedings. The ALJ and the Commissioner have no jurisdiction in the context of this administrative appeal to resolve those types of private contractual disputes. *See Lance Camper Manufacturing Corp. v. Republic Indemnity Co.*, 44 Cal. App. 4th 194, 199-200 (1996). More importantly, Oceanside initiated its appeal on the theory that the RPA illegally alters the CIC Policies' guaranteed cost premiums. *See* Appeal at 5:15-24. In so doing, Oceanside acknowledged that CIC's rates are the legal rates and may not now pivot to disavow them.

It is undisputed that Oceanside has paid \$1,581,929 under the Program, *see* Respondents' Exh. 215, and that the total due under the CIC Policies (including taxes and assessments) is \$1,789,124, *see* Respondents' Exhs. 217-219 (policy registers) & Exhs. 212-214 (earned policies), leaving a shortfall of \$207,195 due to CIC. The Decision must be revised to order Oceanside to pay CIC that amount.

Dated: June 7, 2019

HINSHAW & CULBERTSON LLP

By:



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**PROOF OF SERVICE**

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

File: AHB-WCA-17-41

*In the Matter of the Appeal of: Oceanside Laundry, LLC dba Campus Laundry, Appellants,  
From the Decision of the: California Insurance Company, Applied Underwriters Captive Risk  
Assurance Company Inc., Respondent.*

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am a citizen of the United States and employed in Los Angeles, California, at the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within actions; my business address is One California Street, 18th Floor, San Francisco, California 94111..

On June 7, 2019, I served the document(s) on the interested parties in this action as stated below:

- **RESPONDENTS CALIFORNIA INSURANCE COMPANY AND APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.’ PETITION FOR RECONSIDERATION OF THE INSURANCE COMMISSIONER’S DECISION**

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**BY ELECTRONIC MAIL:** By transmitting a true copy thereof to the electronic mail addresses as indicated above.

I declare under penalty of perjury under the laws of the United States that the above is true and correct and was executed on June 7, 2019, at San Francisco, California.



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Sherie McLean

Bryant Henley  
Deputy Commissioner & Special Counsel  
California Department of Insurance Executive Office  
300 Capitol Mall, 17th Floor  
Sacramento, California 95814

**(BY HAND DELIVERY)**

I declare under penalty of perjury under the laws of the United States that the above is true and correct and was executed on June 7, 2019, at San Francisco, California.



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Sherie McLean