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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of **OCEANSIDE LAUNDRY, LLC, DBA CAMPUS LAUNDRY,** Appellant, From the Decision of the **CALIFORNIA INSURANCE COMPANY; APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.** Respondents.	File AHB-WCA-17-41 **AMENDED ORDER FOLLOWING PETITION FOR RECONSIDERATION**

Statement of the Case

Workers' compensation is a comprehensive benefits system that balances the interests of workers and their employers. Workers receive timely compensation for employment-related injuries but are generally barred from suing their employers. Employers receive protection from lawsuits but must provide benefits regardless of fault.[1]

Because workers' compensation insurance is usually mandatory for California employers, the Legislature charged the Insurance Commissioner ("Commissioner") with closely scrutinizing all insurance plans to protect both workers and their employers.[2] To assist the Commissioner in

[1] See 2 Witkin, Summary Cal. Law 11th, Workers' Compensation, § 1 (2018).
[2] *Nielsen Contracting, Inc. v. Applied Underwriters, Inc.* (2018) 22 Cal.App.5th 1096, 1118.

carrying out this responsibility and to support employers seeking affordable coverage, the Insurance Code mandates that insurers publicly file with the Commissioner all rates and related information used to set workers' compensation insurance premiums.[3]

This proceeding, as well as dozens like it, arises out California Insurance Company ("CIC") and Applied Underwriters Captive Risk Assurance Company, Inc.'s ("AUCRA" and, together with CIC, "Respondents") decision to circumvent California's filing requirements and directly sell an unfiled insurance plan to unwitting employers. Oceanside Laundry, LLC dba Campus Laundry ("Appellant") asserts this unfiled plan, titled EquityComp, and its accompanying Reinsurance Participation Agreement ("RPA") unlawfully modified CIC's filed rates. Appellant's argument substantially relies upon the Commissioner's precedential decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.*,[4] in which the Commissioner determined that Respondents' unfiled RPA was unlawful and void.

Respondents maintain that neither the RPA nor its contents were required to be filed, notwithstanding the *Shasta Linen* decision. Respondents further argue the Commissioner lacks jurisdiction over this appeal and may not grant the remedies Appellant requests. In addition, Respondents contend that AUCRA may not be included as a party to this appeal. Lastly, Respondents contend the Administrative Law Judge ("ALJ") denied them due process by denying discovery, excluding certain witnesses, permitting inappropriate testimony, and prohibiting Respondents from relitigating *Shasta Linen's* factual findings and conclusions.

For the reasons discussed below, the Commissioner concludes as follows: First, the Commissioner has exclusive jurisdiction to hear and decide this case. Second, AUCRA and CIC must be treated as a single enterprise. Third, the RPA unlawfully misapplied CIC's rate filings

[3] See Ins. Code, §§ 11730-11742.

[4] *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, Jun. 20, 2016, AHB-WCA-14-31) (*Shasta Linen*). *Shasta Linen* was designated precedential under Government Code section 11425.60, subdivision (b).

and is unenforceable. Finally, Respondents were not deprived of due process in this appeal and may not relitigate *Shasta Linen's* findings and conclusions.

Issues Presented

1. Did Respondents misapply their Insurance Code section 11735 filings to Appellant by entering into and applying the RPA?

2. If so, what is the appropriate remedy?

Procedural Background

This appeal arises under Insurance Code section 11737, subdivision (f).[5] Appellant initiated the proceedings on December 20, 2017, by filing an appeal from Respondents' December 1, 2017, rejection of Appellant's complaint concerning its workers' compensation insurance and the RPA. The California Department of Insurance ("CDI") Administrative Hearing Bureau issued an Appeal Inception Notice on December 21, 2017. Respondents filed a response on January 3, 2018.[6]

On March 16, 2018, the CALJ ordered the parties to brief the question of whether the Commissioner's *Shasta Linen* decision precluded Respondents from rearguing issues decided in that case. On July 20, 2018, the CALJ issued an Order barring Respondents from rearguing the issues decided in *Shasta Linen* under the doctrines of collateral estoppel and failure to exhaust judicial remedies.

Under that Order, the CALJ also took official notice of the following materials: (i) the *Shasta Linen* decision and the entire evidentiary record before the CDI's Administrative Hearing Bureau in *Shasta Linen*; (ii) the Stipulated Consent and Desist Order *In the Matter of the*

[5] Additionally, these proceedings were conducted in accordance with California Code of Regulations, title 10, sections 2509.40 et seq., and the administrative adjudication provisions of the California Administrative Procedure Act referenced in Regulations section 2509.57. Throughout this Proposed Decision, "Regulations" refers to California Code of Regulations, title 10.

[6] The Workers Compensation Insurance Rating Bureau of California ("WCIRB") also filed a response on January 3, 2018, electing not to actively participate in this appeal.

Certificates of Authority of the California Insurance Company and Applied Underwriters Captive Risk Assurance Company, Inc., MI-2015-00064, adopted by the Commissioner on September 6, 2016; and (iii) the Settlement Agreement among the CDI, CIC and AUCRA, executed in June of 2017.

On July 20, 2018, the CALJ reassigned the appeal to Administrative Law Judge Clarke de Maigret. On August 1, 2018, CIC filed a discovery request. The ALJ denied the request the same day. On December 20, 2018, the ALJ conducted an evidentiary hearing in CDI's San Francisco hearing room. Larry J. Lichtenegger, Esq. represented Appellant. Travis R. Wall, Esq. and Joanna L. Storey, Esq. of Hinshaw & Culbertson LLP represented Respondents.

At the evidentiary hearing, Greg Anderson, Appellant's president, testified on behalf of Appellant. Ellen Gardiner, actuary at Applied Underwriters, Inc., testified on behalf of Respondents.[7] Appellant also called Ms. Gardiner as a hostile witness. The evidentiary record includes the foregoing testimony and the documents admitted into evidence, as identified on the parties' exhibit lists.[8] In addition, Exhibits 14 through 16 were introduced and admitted in evidence at the hearing.

On December 20, 2018, the ALJ issued a Post Hearing Order requiring, among other things, that Respondents submit a certain rate filing as Exhibit 17. Respondents did so, and Exhibit 17 was admitted to the evidentiary record on January 11, 2019.

On February 20, 2019, the ALJ took official notice of the document identified by Respondents as Exhibit 256: a Decision and Order signed by Commissioner Dave Jones and

[7] In their pre-hearing witness list, Respondents listed two potential witnesses: Ellen Gardiner and Gary Osborne. Appellant submitted written objections, dated December 6, 2018, to portions of Ms. Gardiner's proposed testimony and all of Mr. Osborne's testimony. The ALJ sustained those objections on December 11, 2018, limiting Ms. Gardiner's testimony and excluding Mr. Osborne as a witness, on the grounds that their testimony would be irrelevant, unduly time consuming relative to its probative value, or improper for an expert witness.

[8] The following exhibits were admitted in evidence: Exhibits 1 through 17, 200, 205 through 227, 230, 249, 252, 253, and 255. Official notice was taken of the document marked as Exhibit 256.

entitled January 1, 2018 Workers' Compensation Claims Cost Benchmark and Advisory Pure Premium Rates.

On February 21, 2019, the ALJ issued a Notice of Intent to Take Official Notice of CIC's workers' compensation rate filings with the CDI. The ALJ issued an Order Taking Official Notice of those documents on March 8, 2019.

Following post-hearing briefing, the ALJ closed the evidentiary record and signed his proposed decision on March 8, 2019.

On May 6, 2019, the Commissioner issued an Order adopting the ALJ's proposed decision. Respondents timely filed a petition for reconsideration of the Order on June 7, 2019 and the Commissioner issued an order to stay the effective date of his Order for the purpose of reviewing the petition for reconsideration. On June 22, 2019, the Commissioner and Respondents received an email from Appellant with Appellant's attached response to Respondents' petition for reconsideration. Appellant later delivered a hard copy of Appellant's response, which the Commissioner received on June 25, 2019.

Findings of Fact

The Commissioner makes the following factual findings based on a preponderance of the evidence in the record:

I. Appellant's Business

Appellant is a limited liability company that is headquartered near Watsonville, California.[9] The company was organized in 2008, but Appellant has been in business as Campus Laundry since the 1960s.[10] It provides laundry services to hospitals.[11]

[9] Evidentiary hearing exhibit ("Exh.") 200.
[10] Transcript of Proceedings of December 20, 2018 ("Tr."), p. 17:10-13.
[11] Tr. at p. 16:18-22.

II. Appellant's Purchase of EquityComp

Before 2012, Appellant purchased workers' compensation insurance from insurers other than Respondents.[12] In May 2012, Appellant's insurance broker presented it with a written program summary, as well as a proposal and quote (the "Proposal"), for Respondents' EquityComp insurance program.[13] Appellant found the EquityComp program to be "exciting."[14] Appellant was attracted to the program, in part, because the EquityComp program, as advertised, led Appellant to believe it would have a chance to get premiums back after three years if Appellant successfully managed claims and maintained safe business operations during the three years that the policy was in force.[15] Shortly thereafter, following discussions with Appellant's broker and at least one conversation with Respondents about the Proposal,[16] Appellant decided to purchase a three-year EquityComp program and signed Respondents' Request to Bind Coverage & Services on May 29, 2012 (the "Request to Bind").[17] The Request to Bind provides in relevant part:

[12] Exh. 200 at p. 200-5. Exhibit page number references omit preceding "0s." For example, "p. 200-5" refers to the page of Exhibit 200 marked "200-05."
[13] Exhs. 1, 2.
[14] Tr. at p. 31:16-21.
[15] Tr. at p. 31:16-21.
[16] Tr. at p. 28: 10-19.
[17] Exh. 3.

> The applicant(s) identified below, whether one or more (collectively the "Applicant")[18] request that Applied Underwriters, Inc. through its affiliates and/or subsidiaries (collectively "Applied") pursuant to the Workers' Compensation Program Proposal and Rate Quotation ("Proposal") cause to be issued to Applicant one or more workers' compensation insurance policies and such other insurance coverages identified in the Proposal (collectively the "Policies") subject to Applicant executing the following agreements (collectively the "Agreements"): (1) Reinsurance Participation Agreement; and where available, (2) Premium Finance Agreement.
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> . . .
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> This acknowledgment and disclosure is intended to confirm receipt of the Proposal and Applicant's acceptance of the Proposal along with certain additional terms and conditions. Only the Agreements and Policies contain the actual operative provisions. . . .[19]

Appellant's EquityComp program began on June 1, 2012, and ended on June 1, 2015.[20] The Policies and RPA referenced in the Request to Bind are discussed below.

III. Respondents' Business and Organization[21]

Respondents' organizational structure is extensively described in the *Shasta Linen* decision, and that description is adopted here.[22] In short, CIC is a licensed property and casualty company, domiciled in California and licensed to transact business in multiple states.[23] CIC is wholly-owned by North American Casualty Company, a non-insurer owned by Applied Underwriters, Inc. ("AU"), a Nebraska corporation.[24]

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[18] I.e., Appellant.
[19] Exh 3.
[20] Exhs. 5 at p. 5-1, 7 at p. 7-19.
[21] Use of the present tense in this part III means as of the date of the *Shasta Linen* decision, June 20, 2016, and applies to all times relevant to this proceeding.
[22] Specifically, the Commissioner's findings of fact in part V(B) of *Shasta Linen* are incorporated in this Proposed Decision. As noted below, Respondents are precluded from challenging the *Shasta Linen* findings in these proceedings.
[23] *Shasta Linen, supra,* at p. 9.
[24] *Ibid.*

AUCRA is an insurance company domiciled in Iowa.[25] Its sole purpose is to serve as CIC's reinsurance arm.[26] It does not reinsure any other entities or perform any other functions.[27] AUCRA is also an indirect subsidiary of AU.[28]

AU is a financial services company that provides payroll processing services and underwrites workers' compensation insurance through its affiliated insurers to small and medium-sized employers.[29] AU manages all of CIC's underwriting, investment, administrative, actuarial and claim services through a management services agreement. It also administers the EquityComp program on behalf of CIC. For this reason, the EquityComp documents presented to Appellant bear AU's name and/or logo.[30]

The boards of directors of CIC, AUCRA and AU are identical in composition.[31]

IV. EquityComp's Purpose and Program Mechanics

EquityComp's purpose and structure is described at length in *Shasta Linen* and that description is adopted here.[32] In brief, the underlying purpose of EquityComp was to circumvent California's workers' compensation policy aims by providing a type of loss-sensitive insurance to employers who were too small to qualify for that kind of coverage under California law.[33] In loss-sensitive programs, the employer's cost for a given policy year is impacted by the workers' compensation claims incurred that year.[34] In contrast, a guaranteed cost policy's price is unaffected by claims incurred during the policy year.[35]

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[25] *Ibid.*
[26] *Id.* at pp. 10-11.
[27] *Id.* at p. 11.
[28] *Id.* at p. 10.
[29] *Ibid.*
[30] Exhs. 1 through 4.
[31] *Shasta Linen, supra,* at p. 10.
[32] The Commissioner's findings of fact in *Shasta Linen* starting at page 15, subpart (c), through page 30 are incorporated in this Proposed Decision, excluding the first two full sentences on page 30.
[33] *Shasta Linen, supra,* at pp. 23-24, 66.
[34] *Id.* at p. 15.
[35] *Id.* at p. 22.

Generally, carriers market loss-sensitive programs to large employers. Many jurisdictions, including California, restrict the sale of loss-sensitive programs to employers whose annual premium exceeds $500,000. Large employers are typically better able to cope with loss variations and are in a better position to control claims costs.[36] Given their sophistication, larger companies are often better positioned to evaluate the cost effectiveness of different types of insurance.[37] Appellant's estimated annual premiums during the policy years at issue in this appeal did not meet the $500,000 threshold.[38]

EquityComp is a specific form of loss-sensitive insurance known as a "retrospective rating plan."[39] Respondents' EquityComp patent describes the scheme as follows:

> The reinsurance company can now provide funds to implement a non-linear retrospective rating plan as a "participation plan." The reinsurance company does this by entering into a separate contractual arrangement with the insured. If the insured has lower than average losses in the next year, then the reinsurance company can provide a premium reduction according to the participation plan. If the insured has higher than average losses in a given year, then the reinsurance company will assess additional premium accordingly. The insured can now, in effect, have a retrospective rating plan because of the arrangement among the insurance carrier, the reinsurance company and the insured even though, in fact, the insured has Guaranteed Cost insurance coverage with the insurance carrier[40]

AU acknowledged that one of the challenges of a "fundamentally new premium structure" is that "the structure must be approved by the respective insurance departments regulating the sale of insurance."[41] As noted above, California and other states prohibit the sale of retrospective plans to small and mid-sized employers. AU attempted to skirt that regulatory environment by implementing "a reinsurance based approach to providing non-linear

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[36] *Id.* at p. 15.
[37] *Id.* at pp. 15-16.
[38] Exhs. 5 through 7.
[39] *Shasta Linen, supra,* at p. 23.
[40] *Id.* at p. 24.
[41] *Id.* at p. 23.

retrospective plans to insureds that may not have the option of such a plan directly."[42]

Following the framework outlined in Respondents' patent, the EquityComp program sold to Appellant was effectuated under separate annual guaranteed cost policies, combined with a three-year Reinsurance Participation Agreement.[43] The RPA superseded the guaranteed cost policies.[44] Premium owed under the policies was replaced by amounts paid under the RPA.[45] The contracts are discussed in more detail below.

A. The Guaranteed Cost Policies

The guaranteed cost policies were entered into between CIC and Appellant, with annual terms commencing June 1, 2012, June 1, 2013, and June 1, 2014.[46] The policies contain standard language approved by the Commissioner, consistent with the applicable requirements of the Insurance Code and its implementing regulations. For example, each policy states that CIC's rates, rating plans and related information are filed with the Commissioner and open to public inspection.[47]

Each policy sets out the rates that CIC may charge Appellant.[48] CIC filed those rates with the Commissioner before the policies' commencement.[49] In addition, as required by law,[50] CIC warrants in each policy that it adheres to a single uniform loss experience rating plan and applies that experience rating to each policy.[51]

CIC's guaranteed cost policies also include a cancellation provision and a "short rate"

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[42] *Ibid.*
[43] Exhs. 4 through 7.
[44] *Shasta Linen, supra,* at pp. 24, 55.
[45] *Ibid.*
[46] Exhs. 5 through 7.
[47] E.g., Exh. 5 at 5-19.
[48] E.g., Exh. 5 at p. 5-3.
[49] Order Taking Official Notice, dated March 8, 2019 ("March 2019 Official Notice Order"), Exhs. A through C.
[50] Ins. Code, § 11752.8.
[51] E.g., Exh. 5 at p. 5-19; see also *Shasta Linen, supra,* at p. 12.

cancellation notice, as required by the Insurance Code.[52] The policies provide that after cancellation, the final premium will be determined as follows:

> a. If we [CIC] cancel, final premium will be calculated pro rata based on the time the policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
>
> b. If you cancel, the final premium may be more than pro rata; it will be based on the time this policy was in force, and may be increased by our short rate calculation table and procedure. Final premium will not be less than the minimum premium.[53]

The short rate penalty, which discourages employers from changing insurers mid-year, is a percentage of the full-term premium based on the number of days of coverage in the canceled policy.[54] CIC's short rate calculation table provides a formula for determining the early cancellation penalty.[55]

CIC's policies also set a minimum and estimated premium based on an employer's payroll estimates and loss experience modification factor.[56] After estimated taxes and fees, the guaranteed cost policies provide the employer with an annual premium estimate.[57] The final premium due is calculated using actual payroll amounts assigned to a specific classification of the policy and the employer's experience modification factor.[58] Under the policy documents in the absence of the RPA, the final premium for a given policy period would not be impacted by the losses incurred during that period.[59] Appellant acknowledges that in the absence of the RPA, if required to pay the full premium amounts for the guaranteed cost policies, Appellant would still owe Respondent an additional $207,000 for the insurance.[60] Respondents agree that this is

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[52] E.g., Exh. 5 at p. 5-22; see also *Shasta Linen, supra,* at p. 12.
[53] E.g., Exh. 14 at p. 14-31.
[54] *Shasta Linen, supra,* at p. 14.
[55] E.g., Exh. 5 at pp. 5-22 through 5-24; see also *Shasta Linen, supra,* at p. 14.
[56] E.g., Exh. 14 at p. 14-1; see also *Shasta Linen, supra,* at p. 14.
[57] *Ibid.*
[58] *Shasta Linen, supra,* at p. 14.
[59] *Ibid.*
[60] Appellant's Post Hearing Brief, filed January 18, 2019 ("App. Post-Hearing Br."), p. 16.

the approximate amount Appellants still owe for the guaranteed cost policies, in the absence of the RPA.[61]

The policies' dispute resolution provisions do not provide for binding arbitration or any other alternative dispute resolution methods.[62]

B. The RPA and Proposal

The RPA is materially identical to the Reinsurance Participation Agreement at issue in *Shasta Linen*, with the exception of the insureds' names, account numbers and dates, and the specific rates and other numbers set forth on Schedule 1 of those agreements.[63] The RPA and Proposal modify a number of the guaranteed cost policy provisions.[64] Where the RPA and the policies differ, the RPA's terms control.[65]

For example, the RPA contains workers' compensation rates, termed "loss pick containment rates" that supplant the rates set forth in the guaranteed cost policies.[66] The same loss pick containment rates were used to calculate Appellant's projected EquityComp costs set out in the monthly plan analyses provided by Respondents.[67] Additionally, the Proposal states that Appellant would be billed at the RPA's loss pick containment rates.[68] The Proposal makes no reference to the guaranteed cost policies' rates.[69]

The RPA and Proposal are largely comprised of financial terms that affect the amounts Appellant must remit.[70] Most significantly, the RPA establishes a mechanism for assessing

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[61] Tr. p. 53: 10-13.
[62] Exhs. 5 through 7, 14 through 16.
[63] Exh. 4; *Shasta Linen* Exh. 207. Accordingly, all of the Commissioner's findings of fact in part V(D) of *Shasta Linen* are incorporated in this Proposed Decision, with the exception of the second full sentence on page 33.
[64] Exhs. 1, 3, 4; *Shasta Linen, supra,* at p. 55.
[65] *Ibid.*
[66] Exh. 4 at p. 4-10; *Shasta Linen, supra,* at p. 55.
[67] E.g., Exh. 9 at pp. 9-3, 9-6.
[68] Exh. 1 at p. 1-4.
[69] *Ibid.*
[70] Exh. 4.

additional premium if the insureds incur higher than expected losses.[71] That mechanism, set out in RPA sections 1, 2 and 4, establishes a "segregated cell" account that Appellant must pay into, as well as a "run-off term" during which additional premium may be assessed.[72] The mechanism is further described in sections 1 through 4 of RPA Schedule 1, which detail how Appellant's premium is calculated and allocated based in large part on "loss pick containment amounts," "loss development factors," and "exposure group adjustment factors" or "EGAFs."[73] The Proposal sets forth a simplified overview of that mechanism.[74]

RPA section 4 and RPA Schedule 1, section 6 impose early cancellation fees that modify the guaranteed cost policies' cancellation terms and filed rates.[75] Also, the RPA removes Appellant's loss experience modification factor from the premium calculations.[76] Finally, the RPA's terms potentially require the insured to wait a minimum of three years or longer after the RPA's expiration to receive a refund of any excess payments.[77]

Respondents did not file the Proposal or RPA's rates or other financial terms described in this subpart with the Commissioner before or during the RPA's term.[78] Nevertheless, Respondents charged Appellant in accordance with the Proposal and RPA's rates and terms rather than those of the guaranteed cost policies.[79]

V. Post-*Shasta Linen* Proceedings

On June 20, 2016, the Commissioner issued the *Shasta Linen* decision and order. On July 1, 2016, CIC and AUCRA filed a Verified Petition for a Peremptory Writ of Mandate and

[71] Exh. 4; *Shasta Linen, supra,* at p. 24.
[72] Exh. 4 at pp. 4-1, 4-2.
[73] *Id.* at pp. 4-7, 4-8.
[74] Exh. 1.
[75] Exh. 4. The early cancellation fees are described on *Shasta Linen* pages 32-35.
[76] Exh. 4; *Shasta Linen, supra,* at p. 56.
[77] Exh. 4 at p. 4-8; *Shasta Linen, supra,* at pp. 34-35. The RPA also overrides the guaranteed cost policies' dispute resolution provisions. (Exh. 4 at pp. 4-3 through 4-5; Exh. 5 at pp. 5-25, 5-26.)
[78] See *Shasta Linen* Exh. 19. 20, 21, 23, 24; March 2019 Official Notice Order, Exhs. A through C.
[79] Exh. 9 at p. 9-3, Exh. 11 at p. 11-3, Exh. 13 at p. 13-3.

Complaint for Declaratory and Injunctive Relief in Los Angeles County Superior Court (the "Writ Petition and Complaint").[80] The writ petition portion sought judicial review of the *Shasta Linen* decision and order.

On June 28, 2016, the CDI issued a Notice of Hearing and Order to Cease and Desist from Issuance or Renewal of Workers' Compensation Insurance Policies and Collateral/Ancillary Agreements in Violation of Insurance Code Sections 11658 and 11735 and California Code of Regulations, Title 10, Sections 2251 and 2268.[81] On July 13, 2016, the CDI issued an amended version of that notice and order. In connection with the proceedings initiated by the notice, CIC, AUCRA and the CDI entered into a stipulated Consent Cease and Desist Order that was adopted by the Commissioner on September 6, 2016 (the "Consent Order").[82] Section IV of the Consent Order provides, in part:

> A. CIC and AUCRA will cease and desist from issuing any new RPAs or renewing existing RPAs with respect to a California Policy until such time as the RPA has been submitted to the WCIRB and the CDI in compliance with the requirements of Insurance Code § 11658 and 11735 and all other applicable statutes and regulations, and the RPA has not been disapproved.
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> B. Notwithstanding Paragraph IV(A) above, CIC may renew a Policy issued in connection with an RPA in force as of July 1, 2016.
> ...
> N. [Subject to certain exceptions not pertinent to this appeal,] nothing in this Stipulated Agreement affects or limits the powers or rights of the Insurance Commissioner to contend or declare that RPAs (other than RPAs that are filed with the WCIRB and the CDI and that are not disapproved) are unenforceable, void, voidable, or illegal and nothing limits the powers or rights of the Insurance Commissioner to initiate or make any investigation, to institute any legal or administrative proceeding, to take any action permitted by law, and to seek and obtain all relief and remedies (including any fines or penalties), or to adjudicate the rights of others, as otherwise permitted by law.

[80] Exh. 253 at p. 253-1.
[81] Exh. 249 at p. 249-1.
[82] Exh. 249.

On June 2, 2017, CIC, AUCRA and the CDI entered into a Settlement Agreement settling the judicial proceedings initiated by the Writ Petition and Complaint.[83] On June 21, 2017, a request for dismissal was entered on the Writ Petition and Complaint, with prejudice as to the writ petition portion.

Sections 2 and 3 of the Settlement Agreement provide:

> 2. Resolution of the Dispute. The Shasta Order[84] applies to Shasta Linen Supply, Inc. and is based upon the facts and circumstances of the Shasta Action. The designation of the Shasta Order as precedential pursuant to California Government Code § 11425.60, subdivision (b) applies to administrative proceedings before the CDI in cases involving facts and circumstances substantially similar to those in the Shasta Action.
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> 3. Amended RPA. CDI and AUCRA have met and discussed the Shasta Order and modification to the RPA and have agreed that the RPA, as modified (the "Amended RPA") is an agreement between a third party and the insured, and attached in form and substance as Exhibit 1, Form Number AUCRA—CAL 102 (3/17). The Amended RPA will be issued after execution of an Accredited Participant Acknowledgment and Disclosure (the "Acknowledgment") Form Number AUCRA—CAL 101 (5/17). The CDI by execution of this Agreement hereby approves the Amended RPA and Acknowledgment. AUCRA further agrees that it will not make any changes to the Amended RPA or Acknowledgment in the State of California without first submitting it to the CDI for review and approval. CIC and AUCRA agree to provide the AUCRA—CAL 101 and AUCRA—CAL 102 forms to any prospective insured prior to the inception date of the coverage.

The Amended RPA attached to the Settlement Agreement contains a number of changes to the RPA form at issue in *Shasta Linen* and the present appeal.[85] For example, the Amended RPA sets out post-expiration accounting and liquidation provisions that are significantly more favorable to the insured than those of the RPAs in *Shasta Linen* and here.[86] In addition, the Acknowledgment clarifies that Respondents may not sell EquityComp to companies with annual

[83] Exh. 253.
[84] I.e., the Commissioner's Decision and Order in *Shasta Linen*.
[85] Exh. 253 at pp. 253-6 through 253-19.
[86] Exh. 4 at p. 4-8 [¶ 5], 253 at p. 253-16 [¶5].

workers' compensation premiums of less than $500,000.[87]

Analysis

Appellant argues the Commissioner has jurisdiction over this appeal. Appellant also contends Respondents unlawfully used the RPA to misapply their filed rates and rate information. Respondents refute these assertions and stand behind their decision to enforce the RPA. They also maintain that AUCRA may not be included as a party to this appeal. Finally, Respondents contend they have been denied due process and that they are not precluded from rearguing the Commissioner's factual findings and legal conclusions in *Shasta Linen*. The Commissioner finds Appellant's arguments convincing and rejects Respondents' contentions.

I. The Commissioner Has Exclusive Jurisdiction Over This Appeal.

A. Applicable Law

1. The Statutory Rate Filing Scheme

California has an "open rating" workers' compensation regulatory system, in which each insurer sets its own rates and files them with the Commissioner. This framework is intended to curtail monopolistic and discriminatory pricing practices, ensure carriers charge rates adequate to cover their losses and expenses, and provide public access to rate information so that employers may find coverage at the best competitive rates.[88]

Insurance Code section 11735 lays out the statutory filing requirements. Subdivision (a) provides in part that "[e]very insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date." The term "rate" means "the cost

[87] Exh. 253 at p. 253-21.
[88] See, generally, Ins. Code, §§ 11730-11742.

of insurance per exposure base unit," subject to certain limitations.[89] And "supplementary rate information" means "any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured."[90]

2. Insurance Code Section 11737, Subdivision (f)

Insurance Code section 11737, subdivision (f), confers upon the Commissioner jurisdiction to hear and decide private party appeals concerning the application of insurers' section 11735 filings. Specifically, the statute provides, in pertinent part:

> Every insurer ... shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer ... on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. ... Any party affected by the action of the insurer ... on the request may appeal ... to the commissioner, who after a hearing ... may affirm, modify, or reverse that action.

This jurisdiction is exclusive to the Commissioner. As explained in *Farmers Ins. Exchange v. Superior Court*:

> Particularly when regulatory statutes provide a comprehensive scheme for enforcement by an administrative agency, the courts ordinarily conclude that the Legislature intended the administrative remedy to be exclusive unless the statutory language or legislative history clearly indicates an intent to create a private right of action [in court].[91]

B. Analysis and Conclusions of Law

Appellant asserts Respondents charged rates under the RPA that were not filed under Insurance Code section 11735 and that modified the filed rates in CIC's guaranteed cost

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[89] Ins. Code § 11730, subd. (g). Rates exclude the application of individual risk variations based on loss or expense considerations, as well as minimum premiums.
[90] Ins. Code § 11730, subd. (j).
[91] *Farmers Ins. Exchange v. Superior Court* (2006) 137 Cal.App.4th 842, 850.

policies.[92] Because the appeal concerns the manner in which Respondents applied the rating system described in their section 11735 filings, the Commissioner has jurisdiction to hear and decide this case under Insurance Code section 11737, subdivision (f).[93]

Moreover, section 11737 sets out "a comprehensive scheme" to address workers' compensation rate filing violations. As discussed below, section 11737 grants the Commissioner broad authority not only to hear private party appeals, but also to disapprove unfiled rates on his own initiative. Nothing in the statutory language or history indicates the Legislature intended to create a private right to bring civil court actions concerning unfiled rates. Therefore, the Commissioner's jurisdiction under section 11737, subdivision (f), is exclusive.

II. CIC and AUCRA Are a Single Enterprise for the Purposes of this Appeal.

Respondents argue that AUCRA is not an appropriate party to this appeal because it did not provide workers' compensation insurance to Appellant.[94] Respondents further argue the RPA did not modify the guaranteed cost policies because the agreements are between different parties.[95] Specifically, Respondents assert the guaranteed cost policies are between Appellant and CIC, while the RPA is between Appellant and AUCRA. These arguments are not persuasive.

A. Applicable Law

Distinctions between related corporations may be disregarded under the "single enterprise" doctrine.[96] "Two conditions are generally required for the application of the doctrine to two related corporations: (1) such a unity of interest and ownership that the separate corporate

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[92] Appeal, filed Dec. 20, 2017 ("Appeal"), pp. 3:4-9, 5:15-24.

[93] Appellant also asserted a violation of Insurance Code section 11658 in this proceeding. Respondents contest that assertion. The Commissioner determined in *Shasta Linen* that Respondents violated that section by failing to file the RPA form. (*Shasta Linen, supra,* at p. 69; see also *Nielsen Contracting v. Applied Underwriters, Inc., supra,* 22 Cal.App.5th at pp. 1117-1118 [RPA's arbitration clause held unlawful and unenforceable because it was not filed as required by section 11658].) Respondents are precluded from further litigating that issue in these proceedings, as addressed below. However, the outcome of this appeal is not dependent upon the determination of that issue, and it need not be further discussed here.

[94] Respondent's Post-Hearing Opening Brief, filed January 22, 2019 ("Resp. Post-Hearing Br."), pp. 19-20.

[95] *Ibid.*

[96] *Tran v. Farmers Group, Inc.* (2002) 104 Cal.App.4th 1202, 1218.

personalities are merged, so that one corporation is a mere adjunct of another or the two companies form a single enterprise; and (2) an inequitable result if the acts in question are treated as those of one corporation alone."[97]

B. Analysis and Conclusions of Law

In *Nielsen Contracting v. Applied Underwriters, Inc.*,[98] the Court of Appeal agreed with the Commissioner's finding in *Shasta Linen* that AUCRA and CIC are so "enmeshed" and "intertwined" that they should be considered together in determining whether an RPA modified CIC's policies. As the Commissioner determined in *Shasta Linen*:

> AUCRA is not an independent party[.] ... AUCRA is a wholly-owned subsidiary of Applied Underwriters, Inc.; the same corporation that owns CIC. The Boards of Directors for CIC, AU, and AUCRA are identical in composition[.] ... In addition, AUCRA's sole purpose is to serve as supposed reinsurer to CIC. As such, it is inextricably intertwined with CIC and AU. Indeed, the affiliated entities are so enmeshed that each of CIC's financial examinations discuses EquityComp as a CIC product, and there is no evidence CIC sought to distinguish itself from EquityComp.[99]

Thus, CIC and AUCRA shared such a unity of interest and ownership that AUCRA acted as a "mere adjunct" to CIC for the purposes of EquityComp.

The Commissioner further found as follows:

> While CIC may not be a signatory to the RPA, CIC represented that the rates filed and approved by the Commissioner would be the rates charged to California consumers. That CIC contracted with an affiliated corporation to alter or modify those rates does not absolve the carrier from liability in this proceeding, nor does it protect the RPA from analysis. This is especially true given that AU structured EquityComp and the RPA to circumvent state regulators.
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[97] *Id.* at p. 1219.
[98] *Nielsen Contracting v. Applied Underwriters, Inc., supra,* 22 Cal.App.5th at p. 1116.
[99] *Shasta Linen, supra,* at pp. 49-51.

...

> Lastly, the Commissioner must determine whether the rates and rating plan sold to [the appellant] adhere to the Insurance Code and the approved rating plan. If [the appellant's] rates differ from those quoted by CIC and approved by the Commissioner, [the appellant] may challenge those rates under section 11737, subdivision (f), regardless of whether CIC or AUCRA sold [the appellant] the RPA.[100]

These findings establish that treating AUCRA as a separate enterprise would allow CIC to circumvent California's rate filing laws, a plainly inequitable result. Therefore, both prongs of the single enterprise doctrine are met, and CIC and AUCRA must be treated as one entity for the purposes of this appeal.

III. Respondents Violated Insurance Code Section 11735 by Supplanting CIC's Filed Rates with the RPA's Unfiled Rates and Supplementary Rate Information, Thereby Misapplying CIC's Rating Plan.

Appellant argues the RPA unlawfully employed unfiled rates and supplementary rate information.[101] Appellant further contends Respondents' use of the unfiled information misapplied the guaranteed cost policies' rating plan.[102] Respondents assert that a finding of unlawfulness by the Commissioner equates to rate disapproval, which would be invalid because the Commissioner did not comply with the statutory notice and hearing requirements for rate disapproval. Respondents alternatively argue the use of unfiled rates is not unlawful unless the Commissioner first disapproves them, which he did not do. The Commissioner finds Appellant's arguments persuasive and is not convinced by Respondents' arguments.

A. Applicable Law

As previously indicated, Insurance Code section 11735, subdivision (a), requires insurers to file all rates and supplementary rate information, without exception, before using them in California. The term "supplementary rate information" includes any "minimum premium, policy

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[100] *Ibid.*
[101] Appeal at p. 3:4-9.
[102] *Id.* at p. 5:15-24; Appellant's Post Hearing Brief, filed January 18, 2019 ("App. Post-Hearing Br."), pp. 4-15.

fee, rating rule, rating plan, and any other similar *information needed to determine the applicable premium for an insured.*"[103] The Commissioner and courts construe "premium" broadly to include any amounts paid to insurers for coverage.[104] Thus, any information necessary to determine amounts owed by an insured to its insurer is supplementary rate information. As such, it must be filed and open to public inspection under section 11735.

In addition, insurers may charge premium only in accordance with their filed rates and supplementary rate information.[105] As the Commissioner determined in *Shasta Linen*, an insurer's use of unfiled rates or supplementary rate information is unlawful.[106] That is true regardless of whether the Commissioner disapproved the unfiled rates under Insurance Code section 11737.[107]

B. Analysis and Conclusions of Law

The rates set forth in the guaranteed cost policies comport with Respondents' rate filings under Insurance Code section 11735.[108] In contrast, the RPA unlawfully imposes unfiled rates and supplementary rate information that substantially modify and misapply the guaranteed cost policies' rates.

1. Respondents Charged Appellant Unfiled Rates.

Starting in policy year 2012,[109] the Proposal and RPA imposed "loss pick containment

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[103] Ins. Code, § 11730, subd. (j), emphasis added.
[104] *Shasta Linen, supra,* at pp. 48-49 ["[M]oney paid by an insured to an insurer for coverage constitutes premium regardless of its name."]; *Troyk v. Farmers Group Inc.* (2009) 171 Cal.App.4th 1305, 1325 ["[I]nsurance premium includes not only the 'net premium,' or actuarial cost of the risk covered (i.e., expected amount of claims payments), but also the direct and indirect costs associated with providing that insurance coverage and any profit or additional assessment charged."].
[105] *Shasta Linen, supra,* at p. 49.
[106] *Id.* at p. 52.
[107] See *Ibid.*
[108] Exhs. 5 through 7; March 2019 Official Notice Order, Exhs. A through C.
[109] I.e., the annual period beginning June 1, 2012.

rates" of $16.73 for classification code 2585, and $0.70 for classification code 8810.[110] Those rates were not filed in accordance with section 11735.[111] In contrast, the filed rates for those classification codes set out in the 2012 guaranteed cost policy were $19.59 and $0.83, respectively.[112] Similar discrepancies can be seen in all three policy years, as shown in the following table:[113]

Classification Code	Rates (dollars per $100 of payroll)			
	2012 Policy	2013 Policy	2014 Policy	RPA and Proposal
2585	$19.59	$17.06	$20.37	$16.73
8810	$0.70	$0.80	$0.84	$0.70

Simply put, Respondents charged Appellant based on the unfiled loss pick containment rates in the Proposal and RPA, not the guaranteed cost policies' filed rates.[114] It is beyond doubt that the rates Appellant paid departed from those in the guaranteed cost policies. Indeed, Respondents' EquityComp Proposal notes that rates applicable to Appellant are the RPA's loss pick containment rates and not the policies' rates.[115] The monthly EquityComp plan analyses sent by Respondents also confirm that Appellant's program cost was based on the RPA's rates rather than those in the policies.[116] Moreover, the Commissioner found in *Shasta Linen* that the RPA rates and payment terms supplanted those of CIC's policies, and Respondents are precluded from arguing otherwise.[117] Because Respondents charged Appellant based on the unfiled Proposal and RPA rates, they unlawfully changed and misapplied the filed rates in the guaranteed cost policies.

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[110] Exh. 4 at p. 4-10. The classification codes are set out in the California Workers' Compensation Uniform Statistical Reporting Plan—1995, Cal. Code Regs., tit. 10, § 2318.6.
[111] See March 2019 Official Notice Order, Exhs. A through C.
[112] Exh. 5 at p. 5-3.
[113] Exhs. 4 at p. 4-10, 5 at p. 5-3, 6 at p. 6-4, 7 at p. 7-4.
[114] See *Shasta Linen, supra,* at p. 55; Exh. 11 at pp. 11-03, 11-06.
[115] Exh. 1 at p. 1-4.
[116] E.g., Exh. 9 at p. 9-3.
[117] *Shasta Linen, supra,* at p. 56. See discussion in part V(C) below.

2. Respondents Applied Unfiled Supplementary Rate Information.

As laid out above, any information contained in the RPA necessary to determine amounts owed by Appellant constitutes supplementary rate information. As such, it was required to be filed and made public under Insurance Code section 11735. The RPA is predominantly comprised of such information, all of which was unfiled and unlawfully altered the filed rates set out in the guaranteed cost policies.

Most significantly, the RPA lays out a framework for altering Appellant's premium based on losses. Respondents' EquityComp patent describes the premium alteration as follows:

> If the insured has lower than average losses in the next year, then the reinsurance company can provide a *premium reduction* according to the participation plan. If the insured has higher than average losses in a given year, then the reinsurance company will assess *additional premium* accordingly.[118]

The contractual mechanism for assessing additional premium is described in RPA sections 1, 2 and 4, which establish the "segregated cell" account that Appellant must pay into and the "run-off term" during which additional premium may be assessed. The mechanism is further described in sections 1 through 4 of RPA Schedule 1, which detail the calculation and allocation of Appellant's premium based in large part on "loss pick containment amounts," "loss development factors" and "exposure group adjustment factors" or "EGAFs."[119]

In addition, RPA section 4 and RPA Schedule 1, section 6 impose early cancellation fees not set out in Respondents' rate filings, and modify the guaranteed cost policies' cancellation terms and filed rates.[120] Finally, the RPA removes Appellant's loss experience modification factor in calculating premium.[121] That factor, which is detailed in Respondents' rate filings and

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[118] *Shasta Linen, supra,* at p. 24, emphasis added.
[119] Exh. 4 at pp. 4-1, 4-2, 4-7, 4-8.
[120] *Id.* at p. 4-8.
[121] See Exh. 4.

the guaranteed cost policies, is required by law.[122]

In sum, all of the RPA's economic terms purport to change Appellant's premium obligations. Those terms therefore constitute "rates" or "supplementary rate information" as defined in Insurance Code section 11730. Because Respondents included none of that information in its rate filings, as required by Insurance Code section 11735,[123] the RPA is unlawful and misapplied Respondents' rate filings.[124]

3. Respondents' Failure to File the RPA's Rates and Supplementary Rate Information Contravened Public Policy.

Respondents' failure to file the RPA's rate information contravenes public policy, and is not merely a technical violation. The main goal of California's workers' compensation framework is to protect the state's workforce by ensuring benefits are available to those injured or sickened in the course of their employment.[125] Insurance Code section 11735's filing and public inspection requirement furthers that goal in two ways. First, 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.[126] By withholding the RPA's rate information from their rate filings, Respondents prevented the Commissioner from exercising those oversight duties.

Second, section 11735's public inspection requirement provides broad access to filed rate information allowing employers to find coverage at the best competitive rates.[127] When rate information is transparent, policyholders are better able to compare coverage and reduce their costs. And insurers are less likely to gain a monopolistic advantage when all carriers' pricing

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[122] Cal. Code Regs., tit. 10, § 2351.1; *Shasta Linen, supra,* at p. 56.
[123] See *Shasta Linen* Exh. 19, 20, 21, 23, 24; March 2019 Official Notice Order, Exh. A through C.
[124] See *Shasta Linen, supra,* at p. 52.
[125] *Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055, 1065.
[126] See Ins. Code, §§ 11732-11737.
[127] Ins. Code, § 11735, subd. (b); see also Ins. Code, § 11742, subd. (a).

information is public.

In furtherance of those aims, the Legislature passed Insurance Code section 11742 establishing a mandatory online rate comparison guide. Subdivision (a) provides:

> The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and lead to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rates.

When insurers use unfiled rates and supplementary rate information to modify their filed rates and information, they frustrate the Legislature's intent behind the comparison guide and section 11735's public inspection provisions. Respondents' failure to file the RPA's rates and supplementary rate information directly undermined these policy aims by preventing the public from comparing Respondents' filed rates to those actually charged under EquityComp.[128]

4. Rate Disapproval Procedures Are Not Applicable to This Proceeding.

Respondents argue that use of unfiled rate information is not unlawful unless the Commissioner follows the rate disapproval procedures laid out in Insurance Code section 11737, subdivisions (a) and (d).[129] But *Shasta Linen* determined that use of unfiled rates is unlawful regardless of any rate disapproval action.[130] Respondents are bound by that determination and are precluded from rearguing it here.[131] In any event, their argument is incorrect. Finding the use of unfiled rate information unlawful under subdivision (f) is neither equivalent to, nor predicated

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[128] In addition, by marketing and selling EquityComp to companies with less than $500,000 in annual premiums, like Appellant, Respondents frustrated the policy aim of protecting small and mid-sized employers from the risks of loss-sensitive insurance plans. (See *Shasta Linen, supra,* at pp. 15-16.)

[129] Resp. Post-Hearing Br. at p. 23.

[130] *Shasta Linen, supra,* at pp. 45, 52.

[131] See part V(C) below regarding *Shasta Linen*'s preclusive effect.

on, rate disapproval.[132]

Section 11737 delineates two separate roles for the Commissioner. Subdivision (f) authorizes the Commissioner to hear private party appeals concerning the application of rate filings. In contrast, subdivisions (a) though (e) permit the Commissioner to bring his own actions to disapprove unfiled or otherwise improper rates. When the Commissioner finds an unfiled rate or supplementary rating information unlawful under subdivision (f), he performs an *adjudicatory* function. When the Commissioner disapproves an unfiled rate under subdivisions (a) and (d), he acts in an *enforcement* capacity. Indeed, subdivision (f) makes no reference to disapproval. Thus, contrary to Respondents' assertions, determinations of unlawfulness and rate disapprovals are not equivalent.

Respondents further argue that use of unfiled rate information remains lawful unless the rates are first disapproved.[133] Their argument implies that if use of unfiled rates were *per se* unlawful, the Commissioner's authority to disapprove those rates would be superfluous. According to that argument, disapproval must be a prerequisite to finding unfiled rates unlawful.[134] But the argument overlooks statutory language and relevant case law.

First, rate disapproval allows the Commissioner to forestall the use of unlawful rates prior to private party appeals. If the Commissioner learns an insurer is using an unfiled rate, he may stop the unlawful activity by disapproving the rate on his own initiative, rather than waiting until a private party appeal.[135] Thus, rather than being superfluous, the rate disapproval mechanism serves an important policy aim.

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[132] See *Shasta Linen, supra,* at p. 45 ["The authority to hear grievances of employers for misapplication of rates … is separate from the Commissioner's authority to disapprove rates."]
[133] Resp. Post-Hearing Br. at p. 23.
[134] See, e.g., *Shasta Linen Supply, Inc. v. Applied Underwriters, Inc.* (E.D.Cal. Jun. 20, 2016, Civ. No. 2:16-158 WBS AC) 2016 WL 3407797 at p. *4.
[135] Of course, the fact the rates are unfiled makes it likely the Commissioner will not learn of their unlawful use until an aggrieved private party raises an appeal, in which case rate disapproval would be too late to benefit the appellant.

Second, California courts have not accepted Respondents' argument. In *South Tahoe Gas Co. v. Hofmann Land Improvement Co.*,[136] the plaintiff public utility sought to enforce a higher contractual rate than the rate it had filed with the Public Utilities Commission ("PUC"). The defendant countered that the contract was illegal and violated state law and PUC regulations since it charged an unfiled rate. Much like Insurance Code section 11735, the Public Utilities Code section 489 requires the utility to file its rates and rating information. And similar to Insurance Code section 11737, Public Utilities Code section 728 permits the PUC to disapprove a utility's rates. Although there was no indication the PUC acted under section 728, the Court of Appeal agreed that a charge in excess of the filed rate was illegal.[137] In essence, the Court's ruling confirms that rate disapproval proceedings are not a prerequisite to finding the use of unfiled rates unlawful.

Finally, Respondents rely upon an unpublished opinion of the Court of Appeal and interlocutory orders in another case to argue that use of unfiled rates remains lawful unless disapproved by the Commissioner.[138] Those cases are easily distinguished. In both, the plaintiffs attempted to base Unfair Competition Law ("UCL")[139] claims on violations of section 11735's filing requirements. The courts held that such a violation could not form the basis for a claim *in court* when the Commissioner had not disapproved the unfiled rates. In reaching this result, the Court of Appeal relied on *Samura v. Kaiser Foundation Health Plan, Inc.*[140] The *Samura* court held that a UCL claim may not be based on violations of a statute whose enforcement "has been

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[136] *South Tahoe Gas Co. v. Hofmann Land Improvement Co.* (1972) 25 Cal.App.3d 750 (*South Tahoe Gas*).
[137] *Id.* at p. 755.
[138] Resp. Post-Hearing Br. at pp. 23-24 [citing *Bristol Hotels & Resorts v. Nat. Council on Compensation Ins., Inc.* (Mar. 13, 2002, E027037) [nonpub. opn.]; *Shasta Linen Supply, Inc. v. Applied Underwriters, Inc., supra,* 2016 WL 6094446 at pp. *3-*6].
[139] Bus. & Prof. Code, § 17200 et seq.
[140] *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284 (*Samura*).

entrusted exclusively" to a regulatory agency.[141] Such a claim, if allowed, would result in the court improperly invading the agency's exclusive purview.[142] But nothing in *Samura* suggests the agency charged with enforcing the statute may not remedy its violation. While courts may not have original jurisdiction to remedy a violation of section 11735 in a private party action, the Commissioner does.[143]

IV. The RPA Must Be Severed from the Guaranteed Cost Policies.

Having found the RPA void, the Commissioner must consider the appropriate remedy. Respondents argue the Commissioner has no authority to order retrospective remedies under Insurance Code section 11737, subdivision (f). Specifically, Respondents assert the Commissioner may not find a contract void or unenforceable in private party appeals.[144] Appellant argues that the illegal RPA should be enforced except for its EGAF charge multiplier provisions.[145] The Commissioner finds both parties' arguments unpersuasive.[146]

A. Applicable Law

1. Insurance Code Section 11737, Subdivision (f)

Section 11737, subdivision (f), grants the Commissioner broad authority to award remedies in workers' compensation appeals. As previously noted, the statute authorizes him to "affirm, modify, or reverse" an insurer's action concerning the application of its rating system. The statute contains no language restricting remedies the Commissioner may order. Indeed, the breadth of the Commissioner's authority is consistent with his comprehensive role to "require from every insurer a full compliance with all the provisions of [the Insurance Code]."[147]

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[141] *Id.* at p. 1299.
[142] *Ibid.*
[143] See the discussions on jurisdiction in part I above and remedies in part IV below.
[144] Resp. Post-Hearing Br. at pp. 21-22.
[145] App. Post-Hearing Br. at pp. 4-18.
[146] As a preliminary matter, the ALJ notes the Commissioner determined in *Shasta Linen* that he has authority to find a contract void in a private party appeal. (*Shasta Linen, supra,* at pp. 65-68.)
[147] Ins. Code, § 12936.

While Respondents argue that remedies under rate disapprovals may only be applied prospectively,[148] remedies for findings of unlawfulness under subdivision (f) may either be prospective or retrospective.[149] In fact, nothing in subdivision (f) suggests the Commissioner's decision to modify or reverse an insurer's action may apply only on a going-forward basis. That subdivision principally concerns past harm, in that it authorizes a private party "aggrieved" (past) to request action by an insurer to review the manner in which its rating system "has been applied" (past) in connection with the "insurance afforded or offered" (past). Since a prospective remedy would do nothing to address past harm, logically remedies under subdivision (f) may be retrospective.

Finally, because subdivision (f) does not limit the available remedies, the Commissioner may void contracts that are based on unlawful rates and sever unlawful provisions, as appropriate.[150] The California Supreme Court's holding in *Marathon Entertainment, Inc. v. Blasi*[151] clarifies this authority. There, an actress brought a claim a before the California Labor Commissioner, seeking to void a contract with her manager on the grounds the agreement violated the Talent Agency Act. The Labor Commissioner found a violation and declared the contract void even though the statute specified no remedy. The Court explained that since "the Legislature has not seen fit to specify the remedy for violations" of the act, "the full voiding of the parties' contract is available, but not mandatory; likewise, severance is available, but not mandatory."[152] The Court further stated those remedies could be imposed at the administrative level, as well as by the courts.[153]

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[148] Resp. Post-Hearing Br. at p. 24. This Proposed Decision need not, and does not, decide whether there may be circumstances in which rate disapproval remedies may be applied retrospectively.
[149] *Shasta Linen, supra,* at p. 53.
[150] *Id.* at pp. 65-66.
[151] *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 996.
[152] *Ibid.*
[153] *Id.* at pp. 996, 998.

2. Civil Code Sections 1598 and 1608

Civil Code sections 1598 and 1608 render a contract "void" if its object or consideration are unlawful.[154] And the California Supreme Court has held that a contract made in violation of a regulatory statute is generally void.[155] Indeed, courts will not normally enforce an illegal agreement or one against public policy, as the public importance of discouraging prohibited transactions outweighs equitable considerations of possible injustice between the parties.[156]

This is especially true where regulated entities fail to file their rates as required by law. In such cases, California courts have held contractual provisions based on the unfiled rates unlawful and void.[157] Similarly, the Commissioner determined in *Shasta Linen* that insurance contracts based on unfiled rates in violation of Insurance Code section 11735, subdivision (a), are unlawful and void.[158]

In compelling cases, the courts will enforce illegal contracts in order to avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff.[159] "[T]he extent of enforceability and the kind of remedy granted depend upon a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular facts."[160] A contract is absolutely void where the illegality involves *malum in se*—acts "of an immoral character, those which are inequities in themselves, and those opposed to sound public policy or designed to further a crime or obstruct justice."[161] On the other hand, where the illegality involves *malum prohibitum*, the contract will be voidable "depending on the factual context and

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[154] *R. M. Sherman Co. v. W. R. Thomason, Inc.* (1987) 191 Cal.App.3d 559, 563.
[155] *Asdourian v. Araj* (1985) 38 Cal.3d 276, 291.
[156] *Ibid.*
[157] *South Tahoe Gas Co. v. Hofmann Land Improvement Co., supra,* 25 Cal.App.3d at p. 752.
[158] *Shasta Linen, supra,* at pp. 52, 65-66.
[159] *Asdourian v. Araj, supra,* 38 Cal.3d at p. 292.
[160] *South Tahoe Gas Co. v. Hofmann Land Improvement Co., supra,* 25 Cal.App.3d at p. 759.
[161] *Vitek, Inc. v. Alvarado Ice Palace, Inc.* (1973) 34 Cal.App.3d 586, 593.

the public policies involved."[162] In deciding whether to enforce an illegal contract, courts may also consider whether the parties are *in pari delicto* and whether the statute's purpose would best be served by enforcement of the contract.[163]

In addition, a contract made in violation of statute will be enforced "where the penalties imposed by the Legislature exclude by implication the additional penalty of holding the contract void."[164] In determining whether to enforce such a contract, "the courts should strive to deal with the transaction so as to give effect to the fundamental purpose of the Legislature and to a wise public policy."[165]

3. Civil Code Section 1599

The California Civil Code permits severing unlawful provisions from an otherwise lawful contract. Civil Code section 1599 states that "[w]here a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." Section 1599 applies "when the parties have contracted, in part, for something illegal. Notwithstanding any such illegality, it preserves and enforces any lawful portion of a parties' contract that feasibly may be severed."[166]

Severing illegal terms prevent parties from gaining undeserved benefit or suffering undeserved detriment as a result of a voided contract.[167] And it further conserves a contractual relationship where doing so would not condone an illegal scheme.[168]

The doctrine of severability is equitable and fact specific.[169] The overarching inquiry is

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[162] *Asdourian v. Araj, supra*, 38 Cal.3d at p. 293.
[163] *Homestead Supplies, Inc. v. Executive Life Ins. Co.* (1978) 81 Cal.App.3d 978, 990-991.
[164] *Asdourian v. Araj, supra*, 38 Cal.3d at p. 291.
[165] *Vitek, Inc. v. Alvarado Ice Palace, Inc., supra*, 34 Cal.App. at p. 593.
[166] *Marathon Entertainment, Inc. v. Blasi, supra*, 42 Cal.4th at p. 991.
[167] *Baeza v. Superior Court* (2011) 201 Cal.App.4th 1214, 1230.
[168] *Ibid.*
[169] *Marathon Entertainment, Inc. v. Blasi, supra*, 42 Cal.4th at p. 998.

whether severance would further the interests of justice.[170] As explained in *Baeza v. Superior Court*:[171]

> Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate. [Citation.] California cases take a very liberal view of severability, enforcing valid parts of an apparently indivisible contract where the interests of justice or the policy of the law would be furthered.

B. Analysis and Conclusions of Law

1. The RPA Is Void and Its Terms Cannot Be Severed.

Because the RPA is based on unfiled rates and supplementary rate information in violation of Insurance Code section 11735, the agreement is unlawful and void.[172] This determination is consistent with California case law concerning unfiled rates and the Commissioner's determination in *Shasta Linen*.[173] And because the RPA's sole objective is to circumvent lawfully filed rates, its terms cannot be severed.

Consider *South Tahoe Gas Co. v. Hofmann Land Improvement Co.*,[174] discussed above. There, the plaintiff public utility sought to enforce a higher contractual rate than was set out in the plaintiff's regulatory rate filings. The court found the unlawful contractual rate void and unenforceable.[175] The court severed the unlawful rate and enforced the remainder of the contract in that case because "there is no law against contracting for the extension of a gas main. It is only the amount that can be charged which is regulated."[176] That contrasts with this appeal, where the

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[170] *Ibid.*
[171] *Baeza v. Superior Court, supra,* 201 Cal.App.4th at p. 1230.
[172] *Shasta Linen, supra,* at pp. 52, 65-66.
[173] See *South Tahoe Gas Co. v. Hofmann Land Improvement Co., supra,* 25 Cal.App.3d at p. 752 [public utility's unfiled rate held void]; *Shasta Linen, supra,* at pp. 52, 65-66.
[174] *South Tahoe Gas Co. v. Hofmann Land Improvement Co., supra,* 25 Cal.App.3d at p. 752.
[175] *Ibid.*
[176] *Id.* at p. 757.

RPA's central purpose was to illegally modify Respondents' filed rates and override the legal rate scheme set out in the guaranteed cost policies. As earlier discussed, the RPA's economic terms consist of unfiled rates and supplementary rate information whose use is illegal. The remainder of the RPA is boilerplate that serves only to implement the economic provisions.[177] Accordingly, the RPA "has but a single object"[178] making it impossible to sever only those provisions relating to rates and supplementary rate information. In addition, no interest of justice or public policy would be furthered by enforcing any of the boilerplate terms. The Commissioner therefore finds the entire RPA void and unenforceable. And to the extent the RPA's terms are contained in the Proposal, such terms are void and unenforceable under that document as well.

The California Supreme Court's holding in *Marathon Entertainment* also supports the Commissioner's authority to find the RPA void.[179] Nevertheless, Respondents argue an agency may not impose a remedy upon an insurer for noncompliance with the law "unless expressly permitted by statute."[180] In support of this contention, Respondents rely on three pre-*Marathon Entertainment* cases. These cases are inapplicable and unpersuasive.[181] First, Respondents mischaracterize the holding in *American Federation of Labor v. Unemployment Insurance Appeals Board*, in which the Supreme Court stated that statutory remedies may be authorized either expressly *or by implication*.[182] Neither of the other two cases suggest otherwise. Second, the statutes at issue in all three cases define and limit the available remedies, unlike the statute

[177] See, generally, Exh. 4.
[178] Civil Code, §1598.
[179] *Marathon Entertainment, Inc. v. Blasi, supra,* 42 Cal.4th at p. 996.
[180] Resp. Post-Hearing Br. at pp. 21-22.
[181] *American Federation of Labor v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042-1043 (*AFL*); *Peralta Comm. College Dist. v. FEHA* (1990) 52 Cal.3d 40, 60 (*Peralta*); *Shernoff v. Superior Court* (1975) 44 Cal.App3d 406, 409 (*Shernoff*)..
[182] *AFL,* at p. 1039 ["[W]e should not necessarily limit an agency's powers to those expressly granted, because the statutory scheme may 'necessarily imply' those powers."].

discussed in *Marathon Entertainment* and unlike section 11737, subdivision (f).[183] Where statutory remedies are defined, an agency may not exceed their scope. But when remedies remain undefined, as here, *Marathon Entertainment* is clear that voiding and severance are available.

Finally, Appellant argues that only the terms relating to exposure group adjustment factors should be severed from the RPA.[184] But those provisions are not the RPA's (or the Proposal's) only illegal terms, as discussed above. This tribunal cannot sever unlawful terms that disadvantage Appellant but enforce those that Appellant finds favorable. As Appellant rightly pointed out,[185] adjudicators must refuse to enforce *all* unlawful contract terms that violate public policy once the illegality is apparent.[186]

2. No Compelling Reason Exists to Enforce the RPA.

Even assuming the illegal RPA were merely voidable rather than void *per se*, no valid reason exists to enforce it.[187] Failure to enforce the agreement would neither result in unjust enrichment nor an unduly harsh penalty. Additionally, there is no indication the Legislature intended to exclude the administrative remedy of finding the RPA void.

a. Finding the RPA Unenforceable Would Not Result in Unjust Enrichment or an Unduly Harsh Penalty.

The policy behind Insurance Code section 11735, the nature of the illegality, and the particular facts of this case support the conclusion that the RPA should not be enforced.

First, there is no risk of *unjust* enrichment to Appellant, because "an insurer's issuance of

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[183] *Id.* at p. 1025 [remedy limited to payment of unemployment benefits]; *Peralta* at p. 46 [enumerated remedies "related to matters which serve to make the aggrieved employee whole in the context of employment"]; *Shernoff,* at p. 409 [remedies "limited to restraint of future illegal conduct"].
[184] App. Post-Hearing Br. at pp. 4-18.
[185] *Id.* at pp. 10-11.
[186] See *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal.2d 141, 147-148 ["Whatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the power and duty to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids. [Citations.] It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not raise the issue. The court may do so of its own motion when the testimony produces evidence of illegality."].
[187] See *Shasta Linen, supra,* at pp. 67-68.

an illegal contract, even if it results in enrichment to the insured, does not result in *unjust* enrichment, since the insured did nothing wrong and the insurer should have known of its own legal duties."[188]

Second, denying enforcement of the illegal RPA is not unduly harsh, because Respondents knew of California's filing requirements. In fact, their EquityComp patent makes it clear that Respondents not only knew of the filing requirements but used the RPA to evade their regulatory obligations.[189] Additionally, enforcing the RPAs would encourage illegal activity—i.e., the use of unfiled rates and supplementary rate information.[190]

Third, the parties are not *in pari delicto*. Appellant had no reason to know the RPA's rates and supplementary rate information was unfiled. Respondents are the sole parties at fault, since it used the RPA to circumvent California's filing requirements. "[I]t would not be equitable to allow the party who created the illegality to enforce the illegal contract."[191]

Finally, an important purpose behind section 11735's filing and public inspection requirements is to ensure the protection of California's workforce.[192] Insurers who unlawfully use unfiled rate information frustrate that policy.[193] Except in narrow circumstances not applicable here, "[i]t is a settled rule that a contract will not be enforced if the contract is in violation of the provisions of a statute enacted for the protection of the public."[194]

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[188] *American Zurich Ins. Co. v. Country Villa Service Corp.* (C.D.Cal. Jul. 9, 2015, No. 2:14-cv-03779-RSWL-AS) 2015 WL 4163008 at p. *16; accord *Shasta Linen, supra,* at pp. 67-68.
[189] See *Shasta Linen, supra,* at pp. 23-24, 61-62.
[190] *American Zurich Ins. Co. v. Country Villa Service Corp., supra*, at p. *17; accord *Shasta Linen, supra,* at p. 68.
[191] *American Zurich Ins. Co. v. Country Villa Service Corp., supra*, at p. *17; *Shasta Linen, supra,* at p. 68.
[192] See the discussion in part III(B)(3) above.
[193] See discussion in part III(B)(3) above. See also *Shasta Linen, supra,* at p. 67.
[194] *Napa Valley Elec. Co. v. Calistoga Elec. Company* (1918) 38 Cal.App. 477, 478-479; accord *American Zurich Ins. Co. v. Country Villa Service Corp., supra*, at p. *17. The exception involves licensing laws enacted solely "for the protection of private economic interests (such as the interest of property owners in competent construction)" by licensed contractors. (*R. M. Sherman Co. v. W. R. Thomason, Inc., supra,* 191 Cal.App.3d at 566.) Since the workers' compensation statutes were enacted in large part to protect California's workforce, and not merely the economic interests of employers, any "analogy with the licensing cases fails entirely." (*Id.* at p. 568.)

Respondents nevertheless argue under *Medina v. Safe-Guard Products*[195] that the RPA should be enforced because Appellant suffered no harm or loss due to its unfiled rates.[196] But Respondents' reliance on *Medina* is misplaced. There, the statute specifically required the plaintiff to have "'suffered injury in fact and ha[ve] lost money or property'" in order to assert a claim.[197] In contrast, Insurance Code section 11737, subdivision (f), requires no such injury or loss.[198]

Accordingly, the illegal RPA should not be enforced.

b. The Insurance Code Permits Finding the RPA Void.

The Insurance Code does not prevent the Commissioner from finding illegal insurance contracts void, nor is there any indication the Legislature intended such. While section 11737, subdivision (a) authorizes the Commissioner to bring separate proceedings to disapprove unfiled rates, rate disapproval complements, rather than precludes, remedies in private party appeals. As discussed above, disapproval proceedings prevent the use of unfiled rates should the Commissioner promptly learn of the illegal activity. The fact that the Legislature granted the Commissioner such enforcement authority in no way suggests it intended to leave aggrieved parties without a remedy where the Commissioner fails to bring disapproval proceedings because, for example, he was not informed of the unlawful activity in time or lacks the necessary resources. To the contrary, "wise public policy" best discourages the unlawful use of unfiled rates where the Commissioner has authority both to forestall it through the disapproval process and to provide aggrieved parties meaningful recourse after the fact. The Legislature implemented this policy by including both the rate disapproval procedures and the separate private appeal

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[195] *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 115 (*Medina*).
[196] Resp. Post-Hearing Br. at p. 37.
[197] *Medina, supra,* at p. 115.
[198] In a similar context, the court in *South Tahoe Gas* found an unfiled rate unenforceable even though the buyer apparently suffered no harm from the rate's unfiled status. (*South Tahoe Gas Co. v. Hofmann Land Investment Co., supra,* 25 Cal.App.3d at p. 755.)

process in section 11737.

3. The RPA Must Be Severed from the Guaranteed Cost Policies.

Given that the RPA is void and unenforceable, we turn to the question of whether to sever the RPA from the guaranteed cost policies, or whether instead to find the parties' entire contractual arrangement void. The Commissioner finds the RPA must be severed.

While the main purpose of the RPA was illegal— *i.e.*, to use unfiled rate information to modify and misapply Respondents' filed rates—the central purpose of the parties' overall arrangement was valid; to provide Appellant with workers' compensation insurance. The RPA, with its focus on unlawful rates and supplementary rate information, was collateral to that central purpose. Additionally, there has been no allegation in this appeal that any portion of the guaranteed cost policies is unlawful. Moreover, "the interest of justice or the policy of the law would be furthered"[199] by severing the RPA. Finding the entire arrangement void, including the policies, would leave Appellant uninsured for the period in question. That would be neither lawful, since the law requires Appellant to have workers' compensation insurance, nor would it be in the best interest of the workers left without coverage for any injuries occurring during that period. Accordingly, the RPA should be severed from the guaranteed cost policies.

4. Limited Scope of this Order.

Respondents contend that once the RPA is severed from the guaranteed cost policies, it necessarily follows that Appellant must pay the full price of the guaranteed cost policies.[200] Appellant counters that there was never any agreement between the parties to pay the guaranteed cost rates and to the extent Appellant should be required to pay the reasonable value of insurance provided as *quantum meruit*, "this issue is best left for the courts."[201] Respondents go so far as to

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[199] *Baeza v. Superior Court, supra,* 201 Cal.App.4th at p. 1230.
[200] Resp. Post-Hearing Br. at p.38-39; Respondents' Petition for Reconsideration, filed June 7, 2019, at pp. 3-4.
[201] Appellant's Response to Respondent's Petition for Reconsideration, filed June 25, 2019, at pp. 2-4.

contend that the Commissioner has "no jurisdiction...to resolve those types of private contractual disputes."[202]

The Commissioner disagrees with Respondents' restrictive characterization of the scope of his authority to "affirm, modify or reverse" the action of Respondents. Nevertheless, the scope of the Commissioner's jurisdiction is not unlimited.[203] The most appropriate modification to the action of Respondents in this case is to render the RPA void. Because the RPA in this case is severed from the guaranteed cost policies, Respondents must apply the filed rates associated with the Department-approved guaranteed cost policies to determine Appellant's premium obligations. Should either party elect to pursue further remedies before another tribunal, or otherwise continue to dispute the amounts owed in light of the voidance of the RPA in this case, they are of course free to do so.[204]

V. Respondents Received Due Process and a Fair Hearing.

Respondents argue that limitations on their ability to conduct discovery and to present witness testimony deprived them of due process and a fair hearing. The Commissioner disagrees.

A. Discovery Limits Did Not Deprive Respondents of Due Process.

Respondents rely on *Petrus v. Department of Motor Vehicles*[205] to argue that they were improperly denied a right to discovery.[206] However, *Petrus* involved a hearing under the *formal*

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[202] Respondents' Petition for Reconsideration, filed June 7, 2019, at p. 6.

[203] See, e.g., *Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194.

[204] Another tribunal of competent jurisdiction empowered with a broader set of remedies may conclude that the guaranteed cost policies are not enforceable contracts. Such a tribunal, of course, might note that Appellant never intended to purchase a guaranteed cost policy, the parties were not *in pari delicto* when Respondents deliberately chose not to file the now-void RPA, and that "[i]n some cases,...effective deterrence is best realized by enforcing the plaintiff's claim rather than leaving the defendant in possession of the benefit..." (*Maudlin v. Pacific Decision Sciences Corp.* (2006) 137 Cal.App.4th 1001, 1013.) On the other hand, it is reasonable to assume another tribunal will note the Department of Insurance approved the filed guaranteed cost policies, Respondents' guaranteed cost policy rates were properly filed with the Department and the guaranteed cost policies provided Appellant with legally-required workers' compensation insurance. Principles of *quantum meruit*, of course, recognize that Respondents are entitled to the reasonable value for providing Appellant with workers' compensation insurance coverage during the policy years in dispute.

[205] *Petrus v. Department of Motor Vehicles* (2011) 194 Cal.App.4th 1240, 1242-1245 (*Petrus*).

[206] Resp. Post-Hearing Br. at pp. 26-27.

hearing procedures of Chapter 5 of the California Administrative Procedures Act (the "APA").[207] In contrast, this appeal is conducted in accordance with the *informal* procedures of APA Chapter 4.5.[208] Unlike Chapter 5,[209] there is no general right to formal discovery under Chapter 4.5. Nor is such a right specified in Insurance Code section 11737, subdivision (f), or its implementing regulations. Instead, Regulations section 2509.59 provides: "Formal discovery by the parties will be permitted by the hearing officer only upon written notice and a showing of good cause." As discussed in the August 6, 2018, Order Denying Respondent CIC's Request for Discovery, Respondents failed to demonstrate good cause.

Moreover, Respondents' contention that CIC was not "apprised of the documents and witnesses that would be used against it at the hearing" is simply false.[210] All documentary evidence in this proceeding was filed by Respondents. Appellant's witness list was served on or before November 29, 2018, as evidenced by the proofs of service attached to those documents. The evidentiary hearing was conducted three weeks later on December 20, 2018. At the hearing, Appellant called only a witness identified on its witness list. And it introduced no documentary evidence other than the exhibits that Respondents pre-filed at Appellant's request. Respondents thus had ample opportunity to review the evidence that would be used at the hearing.

B. Witness Limitations Did Not Deprive Respondents of Due Process.

Respondents argue they were deprived of due process and fair hearing rights because they were not permitted to present testimony of a proposed witness and the ALJ limited the testimony of their other witness.[211] This argument is unconvincing. As discussed in the ALJ's December 11, 2018 Order Limiting Testimony, the excluded testimony of the proposed

[207] *Petrus* at p. 1244 [License suspension hearing was conducted pursuant to Vehicle Code section 14112, which invokes APA chapter 5.].
[208] Cal. Code Regs., tit. 10, § 2509.57.
[209] See Gov. Code, § 11507.6.
[210] Resp. Post-Hearing Br. at p. 26.
[211] *Id.* at pp. 27-28.

witnesses would have been irrelevant or otherwise inadmissible. In particular, most of the proposed testimony concerned issues decided in *Shasta Linen* that Respondents were estopped from rearguing in this appeal.[212] Respondents had ample opportunity to elicit similar expert witness testimony in *Shasta Linen* and did so. Because they decided to settle and terminate judicial review of that case, Respondents are now bound by its findings.

Respondents also argue that the ALJ improperly elicited testimony from their witness Ellen Gardiner concerning proprietary algorithms underlying the RPA after the ALJ ordered that her testimony be limited to other matters.[213] Respondents contend that eliciting such testimony violated their right to a fair and impartial hearing.[214] But the ALJ did not rely on Ms. Gardiner's testimony concerning the algorithms to make any factual findings or legal conclusions. Accordingly, that testimony could not impact Respondents' due process rights.

C. Respondents May Not Relitigate *Shasta Linen's* Findings and Conclusions.

Respondents contend they may reargue various issues decided in *Shasta Linen*.[215] That is incorrect. As discussed at length in the Notice Regarding the Preclusive Effect of the *Shasta Linen* Decision ("Preclusive Effect Notice"),[216] Respondents are precluded from further litigating those issues by the doctrines of collateral estoppel and failure to exhaust judicial remedies.

VI. The Consent Order Has No Impact on This Appeal.

Respondents argue this appeal must be dismissed because the Consent Order among the CDI, CIC and AUCRA requires the RPA to be enforced and strips Appellant of standing under

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[212] See discussion in subpart C below.
[213] Resp. Post-Hearing Br. at p.28.
[214] Ibid.
[215] Resp. Post-Hearing Br. at p. 26.
[216] Order Taking Official Notice; Notice Regarding Preclusive Effect of the *Shasta Linen* Decision, dated July 20, 2018.

Insurance Code section 11737, subdivision (f).[217] That argument is incorrect for several reasons.

First, nothing in the Consent Order suggests that it binds third parties such as Appellant.[218] Second, the Consent Order provides that the *Shasta Linen* decision is precedential and applies to "any form of RPA that is substantially similar to the RPA issued in Shasta Linen Supply, Inc."[219] Third, the Consent Order expressly states that it neither prevents the Commissioner from declaring unfiled RPAs "unenforceable, void, voidable, or illegal" nor from "adjudicat[ing] the rights of others."[220] As discussed above, the RPA in this case is substantially similar to the RPA in *Shasta Linen*, which the Commissioner determined was unlawful and unenforceable.[221] Accordingly, the Consent Order does not prevent the Commissioner from adjudicating this appeal and finding the RPA void.

Conclusions of Law

Based on the foregoing facts and analysis, the Commissioner makes the following legal conclusions:

1. Pursuant to Insurance Code section 11737, subdivision (f), the Commissioner has exclusive jurisdiction to adjudicate Appellant's claim that Respondent misapplied their Insurance Code section 11735 filings.

2. Respondents' RPA contained rates and supplementary rate information that must be filed pursuant to Insurance Code section 11735. Respondents violated section 11735 by failing to file the RPA's rates and supplementary rate information.

3. Respondents misapplied their Insurance Code section 11735 filings by overriding their filed rates with the RPA's unfiled rates and unfiled supplementary rate information.

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[217] Resp. Post-Hearing Br. at p. 29.
[218] See Exh. 249.
[219] *Id.* at pp. 249-3.
[220] *Id.* at pp. 249-6.
[221] *Shasta Linen, supra,* at p. 69.

4. Because the RPA applied unfiled rates and supplementary rate information, contravening Insurance Code section 11735, the RPA is illegal and void. The RPA cannot be reformed and no compelling reason exists to enforce it. Accordingly, the RPA must be severed from the guaranteed cost policies.

ORDER

IT IS ORDERED:

Respondents shall recalculate Appellant's premium owed for the policy periods at issue in this appeal, using the filed rates for Appellant's guaranteed cost policies. This Order shall become effective immediately.

DATED: July 11, 2019

RICARDO LARA
Insurance Commissioner

By: _____
BRYANT W. HENLEY
Deputy Commissioner & Special Counsel

DECLARATION OF SERVICE BY MAIL

Case Name/No.: In the Matter of the Appeal of:
OCEANSIDE LAUNDRY, LLC,
DBA CAMPUS LAUNDRY
File No. AHB-WCA-17-41

I, CANDACE GOODALE, declare that:

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Executive Office, 300 Capitol Mall, Suite 1700, Sacramento, California, 95814.

I am readily familiar with the business practices of the Sacramento Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in Sacramento, California.

☒ On July 12, 2019 following ordinary business practices, I caused a true and correct copy of the following document(s):

AMENDED ORDER FOLLOWING PETITION FOR RECONSIDERATION; NOTICE OF TIME LIMITS FOR JUDICIAL REVIEW

to be placed for collection and mailing at the office of the California Department of Insurance at 300 Capitol Mall, Sacramento, California, 95814 with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED SERVICE LIST)

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on July 12, 2019.

CANDACE GOODALE

NOTICE OF TIME LIMITS FOR JUDICIAL REVIEW
In the Matter of OCEANSIDE LAUNDRY, LLC, DBA CAMPUS LAUNDRY
Case No. AHB-WCA-17-41

Judicial review of the Insurance Commissioner's Decision may be had pursuant to California Code of Regulations, Title 10, section 2509.76, by filing a petition for a writ of mandate against the Insurance Commissioner or the Department of Insurance, in accordance with the provisions of section 1094.5 of the California Code of Civil Procedure. A petition for a writ of mandamus (writ petition) shall be filed with the Court, and served on the Insurance Commissioner as follows:

Agent for Service of Process
Government Law Bureau
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Since the Administrative Hearing Bureau is a division of the Department of Insurance, and not a separate legal entity, the writ petition should ***not*** name the Administrative Hearing Bureau or the Administrative Law Judge who presided over the matter as respondents. However, a courtesy copy of any writ petition should be delivered to the Administrative Hearing Bureau of the California Department of Insurance as follows:

Department of Insurance
Administrative Hearing Bureau
45 Fremont Street, 22nd Floor
San Francisco, California 94105

A request to the Commissioner or the Hearing Officer for a copy of the administrative record for a writ petition pursuant to California Code of Regulations, Title 10, section 2509.76, subdivision (d) should be made to:

Agent for Service of Process
Government Law Bureau
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

The request should include the Matter name and Case Number specified above.