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American Council of Life Insurers  
American Insurance Association  
Association of California Insurance Companies  
Association of California Life and Health Insurance  
Companies  
Personal Insurance Federation of California

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 04 2011

John A. Clarke, Executive Officer/Clerk  
By *A. Fajardo*, Deputy  
ANNETTE FAJARDO

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER STEVE  
POLZNER,

Petitioner,

v.

OFFICE OF ADMINISTRATIVE LAW,

Respondent,

AMERICAN COUNCIL OF LIFE INSURERS;  
AMERICAN INSURANCE ASSOCIATION;  
ASSOCIATION OF CALIFORNIA  
INSURANCE COMPANIES; ASSOCIATION  
OF CALIFORNIA LIFE AND HEALTH  
INSURANCE COMPANIES and PERSONAL  
INSURANCE FEDERATION OF  
CALIFORNIA,

Real Parties In Interest.

CASE NO. BS129209

VERIFIED ANSWER OF REAL  
PARTIES IN INTEREST, AMERICAN  
COUNCIL OF LIFE INSURERS,  
AMERICAN INSURANCE  
ASSOCIATION, ASSOCIATION OF  
CALIFORNIA INSURANCE  
COMPANIES, ASSOCIATION OF  
CALIFORNIA LIFE AND HEALTH  
INSURANCE COMPANIES, AND  
PERSONAL INSURANCE  
FEDERATION OF CALIFORNIA, TO  
PETITION FOR WRIT OF MANDATE

**BY FAX**

DEPT: 86  
JUDGE: Ann Jones

Real Parties In Interest, American Council of Life Insurers, American Insurance  
Association, Association of California Insurance Companies, Association of California Life  
and Health Insurance Companies, and Personal Insurance Federation of California, hereby

1 answer the Petition for Writ of Mandate, filed by Petitioner, Insurance Commissioner Steve  
2 Poizner, as follows:

3 1. With respect to the allegations in paragraph 1, Real Parties In Interest admit that one  
4 of the Commissioner's functions is to maintain the financial solvency of insurance companies  
5 to ensure that they can pay claims. Real Parties In Interest specifically deny that California law  
6 or any other law gives the Commissioner the discretion to take the actions he took that are the  
7 subject of this litigation.

8 2. With respect to the allegations in paragraph 2, Real Parties In Interest deny that the  
9 actions the Commissioner took were based on any risk to the investments of any insurance  
10 company and certainly not to the investments of all insurance companies. Real Parties In  
11 Interest share the Commissioner's disdain for the policies of the Iran government; however,  
12 they specifically deny that those policies threaten the investments of any insurance company  
13 doing business in California, and certainly do not, as the Commissioner has admitted, adversely  
14 affect the solvency of any such company.

15 3. With respect to the allegations in paragraph 3, Real Parties In Interest admit that the  
16 Commissioner issued a list of 51 companies that purportedly do business in Iran. With respect  
17 to the other allegations in paragraph 3, Real Parties In Interest lack information to know what  
18 process the Commissioner pursued in compiling the list, and on that basis they deny this  
19 allegation, and they specifically deny that the investments held by insurance companies doing  
20 business in California in those listed companies were at risk and the investments did not raise a  
21 concern for the solvency of any insurance company and certainly not of all insurance  
22 companies.

23 4. With respect to the allegations in paragraph 4, Real Parties In Interest admit that the  
24 Commissioner issued a directive compelling all insurance companies to state whether they  
25 would concede to forego future investments in any of the listed 51 companies, stating that he  
26 would use his bully pulpit and publicize the names of those insurance companies that refused to  
27 sign the concession form. Real Parties In Interest specifically deny that the directives from the  
28 Commissioner were a "request" for "voluntary" concessions.

1           5. With respect to the allegations in paragraph 5, Real Parties In Interest admit that the  
2 Commissioner ordered all insurance companies to submit a supplemental form with their  
3 quarterly financial statements listing their investments in any of the listed 51 companies and to  
4 treat those assets as “non-admitted,” that is, of no value. Real Parties In Interest specifically  
5 deny that the Commissioner acted pursuant to the Insurance Code and his authority and that the  
6 action taken by the Commissioner is similar to statutes passed by the California Legislature and  
7 Congress. Real Parties In Interest admit that the Commissioner’s actions were designed to  
8 force insurance companies to divest their investments in companies doing business in Iran.

9           6. With respect to the allegations in paragraph 6, Real Parties In Interest have no  
10 knowledge of the allegations contained in it, and, on that basis, deny each and every allegation.

11           7. With respect to the allegations in paragraph 7, Real Parties In Interest admit that they  
12 petitioned the Office of Administrative Law to issue a determination that the Commissioner’s  
13 Iranian directives were regulatory in nature and invalid because the Commissioner had imposed  
14 them without formally adopting the directives in accordance with the standards and procedural  
15 safeguards of the California Administrative Procedures Act.

16           8. With respect to the allegations in paragraph 8, Real Parties In Interest admit that the  
17 Office of Administrative Law determined that the Commissioner’s Iranian directives were  
18 regulatory in nature, in that they are rules of general application (applied to 1,300 insurance  
19 companies), and that, as the Commissioner admits, intended to implement, interpret, make  
20 specific or otherwise carry out the provisions of the statute. Hence, they are invalid since they  
21 were imposed without the Commissioner complying with the state law governing the adoption  
22 of regulations. Real Parties In Interest specifically deny that the actions taken by the  
23 Commissioner do not meet the definition of a regulation and that the Commissioner acted with  
24 authority pursuant to the Insurance Code.

25           9. With respect to the allegations in paragraphs 9 - 18, Real Parties In Interest admit the  
26 allegations contained in these paragraphs.

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1           10. With respect to the allegations in paragraph 19, Real Parties In Interest lack  
2 information concerning the allegations contained in that paragraph, and, on that basis, deny the  
3 allegations.

4           11. With respect to the allegations in paragraphs 20 - 23, Real Parties In Interest admit  
5 that the Commissioner compiled a list of 51 companies purportedly doing business in Iran.  
6 Real Parties In Interest lack information concerning the process the Commissioner used to  
7 compile the list, or the activities of the specific companies described in paragraph 23, and, on  
8 that basis, deny all other allegations contained in that paragraph. Real Parties In Interest  
9 specifically deny that the insurance company investments, if any, described in paragraph 23  
10 posed any solvency risk to any insurance company.

11           12. With respect to the allegations in paragraphs 24 -26, Real Parties In Interest  
12 incorporate their answer to paragraph 4 in answer to the allegations of these paragraphs.

13           13. With respect to the allegations in paragraph 27, Real Parties In Interest admit the  
14 allegations contained in this paragraph.

15           14. With respect to the allegations in paragraph 28, Real Parties In Interest admit that  
16 the Commissioner intended all insurance companies to identify their investments in the 51  
17 listed companies and to treat them as “non-admitted.” Real Parties In Interest specifically deny  
18 that the Commissioner acted to address any financial hazard, least of all a severe one, posed by  
19 investments in the listed 51 companies, and they further deny that investments held by  
20 insurance companies in the listed 51 companies posed any solvency concerns.

21           15. With respect to the allegations in paragraph 29, Real Parties In Interest admit the  
22 allegations contained in this paragraph and specifically admit that treating all investments in the  
23 listed 51 companies as non-admitted has not impaired any insurers surplus to trigger action by  
24 the Department. This allegation constitutes an admission by the Commissioner that the level of  
25 investments held by insurance companies in the listed 51 companies raised no solvency issue if  
26 the entire investment were to be lost, an unlikely event under the most extreme imaginable  
27 circumstance, since the listed 51 companies have business dealings in locations other than Iran  
28 that would not be impacted by Iran’s actions.

1           16. With respect to the allegations in paragraphs 30 - 32, Real Parties In Interest admit  
2 the allegations contained in these paragraphs.

3           17. With respect to the allegations in paragraph 33, Real Parties In Interest deny that  
4 the Office of Administrative Law received their reply on August 27, 2010, and allege that it  
5 was received on August 10, 2010.

6           18. With respect to the allegations in paragraphs 34-44, Real Parties In Interest admit  
7 the allegations contained in these paragraphs, and specifically admit, as alleged in paragraph  
8 44, that the Office of Administrative Law's determination is entitled to deference.

9           19. With respect to the allegations in paragraph 45, Real Parties In Interest deny the  
10 allegations contained in this paragraph.

11           20. With respect to the allegations in paragraph 46, Real Parties In Interest admit the  
12 allegations contained in this paragraph.

13           21. With respect to the allegations in paragraphs 47 - 51, Real Parties In Interest deny  
14 each and every allegation contained in these paragraphs, and specifically deny that the Office of  
15 Administrative Law treated the creation of the list of 51 companies as an independent  
16 regulatory action. Rather, it treated the list of 51 companies as part of the other regulatory  
17 actions taken by the Commissioner, directing insurance companies to forego investments in the  
18 list of 51 companies, and to treat such investments as non-admitted. Further, Real Parties In  
19 Interest deny that the process the Commissioner used to create the list of 51 companies is the  
20 application of law on a case-by-case basis rather than a rule of general application. The  
21 Commissioner regulates insurance companies. He does not regulate companies doing business  
22 in Iran. His directives applied the list of 51 companies to all insurance companies. He did not  
23 proceed against 1,300 insurance companies on a case-by-case basis.

24           22. With respect to the allegations in paragraph 52, Real Parties In Interest admit that  
25 the Office of Administrative Law did not conclude that the list of 51 companies was not part of  
26 the Commissioner's effort to implement, interpret, or make specific particular laws. The Office  
27 of Administrative Law properly concluded that the list was part of the Commissioner's effort to  
28 implement, interpret, or make specific particular laws.

1           23. With respect to the allegations in paragraphs 53 - 54, Real Parties In Interest deny  
2 that Insurance Code sections 12921.5, 729, 738, 733, 734, or 736 authorize the Commissioner  
3 to issue the Iranian directives pertaining to investments in the 51 listed companies.

4           24. With respect to the allegations in paragraph 55, Real Parties In Interest deny the  
5 allegations of this paragraph.

6           25. With respect to the allegations in paragraph 56, Real Parties In Interest admit that  
7 Insurance Code section 12921.5 generally relates to disseminating information about insurance  
8 law for the assistance and information of the public, but they deny that it authorizes any action  
9 the Commissioner has taken relating to investments in the 51 listed companies.

10           26. With respect to the allegations in paragraph 57, Real Parties In Interest deny the  
11 allegations contained in this paragraph. The Office of Administrative Law recognized that the  
12 Commissioner regulates insurance companies and not the companies on the list of 51, and  
13 determined that the Commissioner's directives relating to insurance companies' investments in  
14 the 51 listed companies were regulation of insurance companies, entities that are subject to  
15 lawful regulation by the Commissioner.

16           27. With respect to the allegations in paragraph 58, Real Parties In Interest admit that  
17 the Office of Administrative Law determined that the directive relating to insurance companies'  
18 investments in the 51 listed companies were underground regulations.

19           28. With respect to the allegations in paragraphs 59 - 65, Real Parties In Interest deny  
20 each and every allegation contained in these paragraphs, and specifically deny that the  
21 Commissioner acted pursuant to any authority, that Insurance Code sections 729, 730, 733, 734  
22 or 736 authorizes the actions taken by the Commissioner relating to insurance company  
23 investments in the listed 51 companies, and that the Commissioner's directives are simply a  
24 form, exempt from the requirements of the California Administrative Procedures Act.

25           29. With respect to the allegations in paragraphs 66 - 67, Real Parties In Interest deny  
26 the allegations contained in these paragraphs.

27           30. With respect to the allegations in paragraph 68, Real Parties In Interest admit that  
28 the Office of Administrative Law determined that the Commissioner's directives to all

1 insurance companies to treat investments in the 51 listed companies as non-admitted was a rule  
2 of general applicability and had not been made on a case-by-case basis. Real Parties In Interest  
3 deny the other allegations contained in this paragraph.

4 31. With respect to the allegations in paragraph 69, Real Parties In Interest admit that  
5 the Office of Administrative Law determined that the Commissioner's directive to all insurance  
6 companies to treat investments in the 51 listed companies as non-admitted was issued, as the  
7 Commissioner asserts, to implement, interpret, or make specific law.

8 32. With respect to the allegations in paragraph 70, Real Parties In Interest deny the  
9 allegations contained in this paragraph, and specifically, deny that investments in the listed 51  
10 companies posed any risk to policyholders.

11 33. With respect to the allegations in paragraph 71, Real Parties In Interest admit that  
12 Insurance Code section 923 authorizes the Commissioner to change the financial statement  
13 form. Real Parties In Interest deny the other allegations of this paragraph, and specifically  
14 deny that disqualifying certain investments is simply changing a form.

15 34. With respect to the allegations in paragraph 72, Real Parties In Interest admit that  
16 the Office of Administrative Law determined that the California Administrative Procedures Act  
17 applies to the directives issued by the Commissioner requiring insurance companies to list their  
18 investments in the 51 listed companies separately and to treat them as non-admitted, actions  
19 that go far beyond changing a form as authorized by section 923.

20 35. With respect to the allegations in paragraph 73, Real Parties In Interest deny the  
21 allegations contained in that paragraph.

22 WHEREFORE, Real Parties In Interest pray:

23 1. That the petition for writ of mandate be denied for each of the three causes of action  
24 and that the Commissioner take nothing by this action.

25 2. That the Real Parties In Interest be awarded their costs in this matter, including  
26 attorney fees.

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3. For such other relief as may be just.

DATED: February 4~~th~~, 2011

GREENBERG TRAURIG, LLP

By:   
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GENE LIVINGSTON  
Attorneys for Real Parties In Interest  
American Council of Life Insurers,  
American Insurance Association,  
Association of California Insurance  
Companies, Association of California  
Life and health Insurance Companies,  
and Personal Insurance Federation of  
California

3 **VERIFICATION**

4 I, Brad Wenger, am the President and Chief Executive Officer of the Association of  
5 California Life and Health Insurance Companies, a party to this action, and am authorized to  
6 make this verification on its behalf. I have read the foregoing Answer to Petition for Writ of  
7 Mandate and know its contents. I am informed and believe and on that ground allege that the  
8 matters stated therein are true. The same is true of my own knowledge, except as to those  
9 matters alleged on information and belief, and as to those matters, I believe them to be true.

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

12 Executed this Third day of February, 2011, in Sacramento, California.

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14 \_\_\_\_\_  
15 BRAD WENGER, President and CEO  
16 Association of California Life and Health  
17 Insurance Companies  
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3 **DECLARATION OF SERVICE**

4 I am a citizen of the United States, over the age of 18 years, and not a party to or  
5 interested in this action. I am employed in the County of Sacramento, State of California and  
6 my business address is Greenberg Traurig, LLP, 1201 K Street, Suite 1100, Sacramento, CA  
7 95814. On this day I caused to be served the following document(s):

8 **VERIFIED ANSWER OF REAL PARTIES IN INTEREST, AMERICAN COUNCIL OF  
9 LIFE INSURERS, AMERICAN INSURANCE ASSOCIATION, ASSOCIATION OF  
10 CALIFORNIA INSURANCE COMPANIES, ASSOCIATION OF CALIFORNIA LIFE  
11 AND HEALTH INSURANCE COMPANIES, AND PERSONAL INSURANCE  
12 FEDERATION OF CALIFORNIA, TO PETITION FOR WRIT OF MANDATE**

13  by placing  the original  a true copy into sealed envelopes addressed and served as  
14 follows:

15 Deborah Cornez Attorneys for Respondent,  
16 Kathleen Eddy Office of Administrative Law  
17 Elizabeth Heidig  
18 OFFICE OF ADMINISTRATIVE LAW  
19 300 Capitol Mall, Suite 1250  
20 Sacramento, CA 95814  
(916) 323-6800 Telephone  
(916) 323-6826 Facsimile  
dcornez@oal.ca.gov;  
keddy@aol.ca.gov;  
eheidig@aol.ca.gov

21 Susan K. Leach Attorneys for Petitioner,  
22 Deputy Attorney General Insurance Commissioner Steve Poizner  
23 DEPARTMENT OF JUSTICE  
24 300 South Spring Street, Suite 1702  
25 Los Angeles, CA 90013  
(213) 897-2105 Telephone  
(213) 897-1071 Facsimile  
susan.leach@doj.ca.gov

26  **BY MAIL:** I am familiar with this firm's practice whereby the mail, after being placed  
27 in a designated area, is given fully prepaid postage and is then deposited with the U.S.  
28 Postal Service at Sacramento, California, after the close of the day's business.

**BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand.

**BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and  
delivery in accordance with standard overnight delivery procedures for delivery the next  
business day.

**BY FACSIMILE:** I caused such document(s) to be transmitted by facsimile  
transmission from (916) 448-1709 to the person(s) and facsimile transmission  
number(s) shown above. The facsimile transmission was reported as complete without  
error and a transmission report was properly issued by the transmitting facsimile  
machine. A true and correct copy of the transmission report will be attached to this  
proof of service after facsimile service is completed.

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

2 Executed on February 4, 2011 at Sacramento, California.

3   
4 **SHARI LYNNE GOMES**

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