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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

5 *Attorneys for Cross-Complainants & Real Parties In*  
6 *Interest*  
7 Association of California Insurance Companies and  
8 Personal Insurance Federation of California

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 INSURANCE COMMISSIONER STEVE  
11 POIZNER,

12 Petitioner,

13 v.

14 OFFICE OF ADMINISTRATIVE LAW,  
15 Respondent,

CASE NO. BS129209

16 AMERICAN COUNCIL OF LIFE INSURERS,  
17 AMERICAN INSURANCE ASSOCIATION,  
18 ASSOCIATION OF CALIFORNIA  
19 INSURANCE COMPANIES, ASSOCIATION  
20 OF CALIFORNIA LIFE AND HEALTH  
21 INSURANCE COMPANIES, and PERSONAL  
22 INSURANCE FEDERATION OF  
23 CALIFORNIA,

VERIFIED CROSS-COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF

**BY FAX**

20 Real Parties In Interest.

22 ASSOCIATION OF CALIFORNIA  
23 INSURANCE COMPANIES and PERSONAL  
24 INSURANCE FEDERATION OF  
25 CALIFORNIA,

24 Cross-Complainants,

25 v.

26 INSURANCE COMMISSIONER DAVE  
27 JONES,

28 Cross-Defendant.

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This cross-complaint is filed on behalf of Cross-Complainants and Real Parties In Interest Association of California Insurance Companies and Personal Insurance Federation of California, against Petitioner and Cross-Defendant (previously Insurance Commissioner Steve Poizner, now Insurance Commissioner Dave Jones). For their complaint, they allege as follows:

**INTRODUCTION**

1. Cross-Complainants seek injunctive and declaratory relief as a result of the Commissioner of the California Department of Insurance imposing and enforcing “underground regulations” against their member companies. Underground regulations are rules of general applicability that interpret, implement, or make specific other provisions of law, and that are imposed without first having been adopted in accordance with the standards and procedural safeguards of the California Administrative Procedure Act (“APA”). The failure to comply with the provisions of the APA renders such rules invalid, and they cannot lawfully be enforced.

2. The Commissioner of the California Department of Insurance has issued rules applicable to approximately 1,300 insurers doing business in California, seeking to regulate their investments in international businesses conducting business with certain private sector businesses located in Iran. The Commissioner asserts that he has issued these rules to enforce specific statutory provisions contained in the California Insurance Code.

3. None of the statutory provisions relied on by the Commissioner provide any authority for him to issue rules to all insurers doing business in California relating to their specific investments, and certainly not in complete violation of the procedures for adopting rules of general applicability as spelled out in the APA. In fact, the Office of Administrative Law (“OAL”), an agency charged by the Legislature to investigate rules issued without compliance of the APA, has concluded that the Commissioner’s rules seeking to regulate insurers’ investments in companies doing business in Iran was regulatory in nature and should

1 have been adopted in accordance with the provisions of the APA. The Commissioner's failure  
2 to do so renders the rules invalid.

3 4. In addition to lacking authority under the Insurance Code to direct insurers in their  
4 investments, the Commissioner is preempted by the federal Constitution and federal law from  
5 regulating foreign commerce or relations with foreign nations. Despite this preemption, the  
6 Commissioner made his intent clear in a press release issued on December 2, 2009. In that  
7 release, he said, "The government of Iran continues its oppressive crackdown against its own  
8 people and thumbs its nose at the international community over its expanding nuclear program.  
9 Iran's ambition to dominate the region under a nuclear umbrella is a very serious threat to this  
10 country and to people all over the world. It's just wrong for consumers here in California to  
11 find out that their hard-earned money that they pay in insurance premiums are propping up the  
12 regime in Iran. We need to do whatever it takes to put maximum pressure on Iran to change its  
13 behavior." No insurer condones the pronouncements and actions of the Iranian government.  
14 However, that is not the issue in this case. The issue is that the Commissioner has no authority  
15 under the California Insurance Code to issue a rule of general applicability as he has done here,  
16 regulating insurers' investments in foreign companies, and further, he is preempted by the U.S.  
17 Constitution and federal law from taking such action (*See, e.g., American Insurance*  
18 *Association v. Garamendi*, 539 U.S. 396 (2003).)

19 5. Despite the invalidity of the rules issued by the Commissioner, seeking to regulate  
20 investments in companies doing business in Iran, he continues to enforce them. Accordingly,  
21 Cross-Complainants have no alternative other than to seek injunctive and declaratory relief.

## 22 PARTIES

23 6. The Association of California Insurance Companies ("ACIC") is a trade organization  
24 existing to promote the interests of insurance companies doing business in California. Its  
25 members are comprised of more than 300 insurance companies that write all property/casualty  
26 lines of business in California.

27 7. The Personal Insurance Federation of California ("PIFC") is a trade organization  
28 existing to promote the interests of insurance companies doing business in California. Its

1 members are comprised of insurance companies that underwrite residential property insurance  
2 within the state of California

3 8. Cross-Defendant and Petitioner is the Commissioner of the California Department of  
4 Insurance. During 2010, the time that most of the events set out in this cross-complaint  
5 occurred, the Commissioner was Steve Poizner. Dave Jones became Commissioner on January  
6 3, 2011. The Commissioner is the head of the California Department of Insurance and is  
7 responsible for implementing the specific regulatory provisions of the Insurance Code.

### 8 BACKGROUND

9 9. On February 10, 2010, the Commissioner, through the General Counsel, Adam Cole,  
10 of the California Department of Insurance, issued an electronic communication to all 1,327  
11 insurance companies doing business in the state of California. The directive announced:

12 a. The Department has developed a list of companies doing business with the Iranian  
13 oil and natural gas, nuclear, or defense sector.

14 b. Every company on the list is subject to financial risk as a result of doing business in  
15 Iran. Because of the Iranian government's activities, companies doing business there are  
16 subject to "asymmetric reputational harm," and accordingly, financial or market risk.

17 c. Effective March 30, 2010, the Department will treat all investments by insurers  
18 selling insurance in California in companies on the list and affiliates-owned 50% or more by  
19 such companies as non-admitted on the insurer's financial statements. **All financial**  
20 **statements filed from periods ending on or after March 31, 2010 by insurers must report**  
21 **all investment holdings on the list as not-admitted assets.**

22 d. All insurers were "requested" to agree not to invest in the future in any of the  
23 companies on the list or affiliates-owned 50% or more by those companies until (a) Iran is  
24 removed from the United States State Department's list of state sponsors of terrorism, or (b) the  
25 company and its affiliates cease to do business with Iran's oil and natural gas, nuclear, and  
26 defense sectors and is removed from the list.

27 e. All companies were required to respond by March 12, 2010 to the "request." The  
28 Department may publish the names of all companies not responding or declining the

1 Department's "request" for a moratorium on future investments in the companies on the list and  
2 affiliates-owned 50% or more by those companies.

3 10. On April 16, 2010, the Commissioner, once again, through the General Counsel,  
4 Adam Cole, issued a directive to all admitted insurance companies relating to the supplemental  
5 filing on Iran-related investments. This directive:

6 a. Added Shell International Finance to the initial list of 50 companies doing business  
7 in Iran.

8 b. Dropped investments in affiliates-owned 50% or more by companies on the list.

9 c. Required insurers to complete an Iran-Related Investments Supplemental Filing  
10 Workbook by May 31, 2010, treating all such investments as non-admitted.

11 d. Warned non-complying companies that failure to submit the completed supplemental  
12 filing by the due date will be referred to the Department of Insurance's Legal Division for  
13 further action.

14 11. On May 12, 2010, the Commissioner published a list of 296 insurers that did not  
15 agree to forego future investments in the listed companies doing business in Iran.

16 12. The directives issued by the Commissioner on February 10, 2010, and those issued  
17 subsequently on April 16, 2010, and May 12, 2010, in furtherance of the February 10, 2010  
18 directives, are regulations. They are rules of general application in that they are imposed on  
19 over 1,300 insurers. They are intended implement, interpret, and make specific provisions of  
20 state and federal law. The directives pertaining to investments and companies doing business  
21 in Iran are not exempt under any statutory exception from compliance with the provisions of  
22 the APA.

23 13. On October 11, 2010, the Office of Administrative Law, acting consistently with its  
24 statutory charge under Government Code section 11340.5, determined that the communication  
25 issued by the Commissioner on February 10, 2010, met the definition of a regulation, was not  
26 adopted pursuant to the APA, and therefore, is an invalid underground regulation. Further,  
27 OAL concluded that none of the exceptions to the requirement that rules be adopted pursuant to  
28 the APA apply to the communication issued by the Commissioner. OAL's determination was

1 issued pursuant to a Petition submitted to OAL by five insurance trade associations, including  
2 Cross-Complainants.

3 14. Despite the OAL determination that the Commissioner's directives pertaining to  
4 investments in companies doing business in Iran is an underground regulation, the  
5 Commissioner, on December 14, 2010, dropped four companies, Royal Dutch Shell, Shell  
6 International Finance, Total SA, and Repsol YPF, leaving 47 on the list of companies doing  
7 business in Iran.

8 15. Again, despite OAL's determination, new Commissioner Dave Jones, on February  
9 1, 2011, through the General Counsel, Adam Cole, issued a directive to all admitted insurance  
10 companies relating to the Supplemental Filing on Iran-Related Investments - Fourth Quarter  
11 2010. This directive:

12 a. Contains a list of 47 companies on the list of companies doing business in Iran.

13 b. Treats all investments in companies on the list as non-admitted.

14 c. Requires insurers to complete and return the Iran-Related Investments Supplemental  
15 Filing Workbook to the Department no later than March 1, 2011.

16 **FIRST CAUSE OF ACTION**

17 [For Injunctive Relief]

18 16. Cross-Complainants and Real Parties In Interest incorporate by reference each and  
19 every allegation contained in paragraphs 1 through 15.

20 17. The Commissioner, through the directives issued on December 14, 2010, and  
21 February 1, 2011, continues to compel insurers that are members of Cross-Complainants to  
22 comply with invalid underground regulations. Specifically, insurers subject to the directives  
23 are disadvantaged because their capacity to write insurance is diminished when the amounts of  
24 their investments in companies on the list are non-admitted. Insurers will continue to be  
25 disadvantaged until such as time as the Commissioner relieves them of the requirement to not  
26 invest in companies on the list and not treat those investments as non-admitted, or until such  
27 time as a court enjoins the Commissioner from continuing to enforce the underground  
28 regulation.

1 18. Cross-Complainants have no plain, speedy and adequate remedy at law.

2 **SECOND CAUSE OF ACTION**

3 [For Declaratory Relief]

4 19. Cross-Complainants and Real Parties In Interest incorporate by reference each and  
5 every allegation contained in paragraphs 1 through 18.

6 20. An actual controversy has arisen between Cross-Defendant and Cross-  
7 Complainants in that the Commissioner maintains he is authorized to issue a rule of general  
8 applicability to implement California Insurance Code sections 706.5, 717, 729, 730, 733, 734,  
9 736, 739-739.12, 920, 923, 939-956, 1065.1-1065.7, 1196, 1215.5, 12921.3, and 12921.5 that  
10 applies to insurers doing business in California's with investments in companies on the list by  
11 doing the following:

12 a. Creating the list.

13 b. Requiring insurers to submit a "Response Form" in which they agree or do not agree  
14 to invest in companies on the list.

15 c. Treating investments by insurers in companies on the list as non-admitted on their  
16 financial statements.

17 d. Requiring insurers to report all investment holdings on the list as not admitted.

18 Cross-Complainants contend the Commissioner, in implementing the statutes set out in this  
19 paragraph, is not authorized to issue a rule of general applicability that applies to insurers'  
20 investments in companies that are on the list.

21 21. The Commissioner issued this rule of general applicability with the intent -- and  
22 certainly with the effect -- of influencing relationships with Iran; i.e., as a foreign policy not  
23 simply an economic one. He stated in a news conference in January 2010, one month prior to  
24 releasing the first version of the list, "The regime in Iran is attempting to dominate the region  
25 and is a huge national security threat to this country ... . It is very important for anyone in a  
26 position like I am to look for a way to put maximum financial pressure on Iran."

27 22. Cross-Complainants contend, and the Commissioner disputes, that the  
28 Commissioner's actions and attempts to enforce a rule of general applicability regarding

1 insurers' investments in companies on the list are preempted as inconsistent with both federal  
2 policy and the nature of the exclusive federal authority over foreign relations.

3 23. Cross-Complainants contend, and the Commissioner disputes, that the  
4 Commissioner's actions and attempts to enforce a rule of general applicability regarding  
5 insurers' investments in companies on the list violate the Foreign Commerce Clause of the U.S.  
6 Constitution.

7 24. Cross-Complainants request a judicial determination of their rights and duties, and  
8 a declaration that the Commissioner does not have the authority to issue a rule of general  
9 applicability which controls their investments in companies on the list, or to enforce the  
10 requirements imposed on insurance companies as identified in paragraph 20, and that such a  
11 rule is preempted by the U.S. Constitution and federal law.

12 25. Cross-Complainants have no plain, speedy and adequate remedy at law other than  
13 this proceeding for a declaration that the directives issued by the Commissioner relating to  
14 insurers investments in companies doing business in Iran exceed the scope of the  
15 Commissioner's authority and are further preempted by the U.S. Constitution and federal law,  
16 and are therefore unlawful, void, and unenforceable. Unless such a declaration is granted,  
17 Cross-Complainants and their member companies will continue to be subjected to directives  
18 issued by the Commissioner seeking to regulate their investments in companies doing business  
19 in Iran. Further, they will continue to face the Hobson's choice between facing disciplinary  
20 action by the Commissioner if they do not comply and having their investments illegally and  
21 unconstitutionally devalued if they do comply.

22 **PRAYER**

23 WHEREFORE, Cross-Complainants pray for relief as follows:

24 1. That the court issue a preliminary and permanent injunction against the  
25 Commissioner from continuing to impose and enforce any directives against insurers relating to  
26 their investments in companies doing business in Iran.

27 2. That the Court declare that the Commissioner does not have authority to issue a rule  
28 of general applicability controlling insurers' investments in companies doing business in Iran or



1 to treat such investments as non-admitted, and to further declare that such a rule is preempted  
2 by the U.S. Constitution and federal law.

3 3. That the Court award Cross-Complainants their attorneys fees and costs pursuant to  
4 section 1021.5 of the California Code of Civil Procedure.

5 4. That the Court grant and issue such further and additional relief as the Court deems  
6 just and proper.

7 Respectfully submitted,

8 DATED: February 4<sup>th</sup>, 2011

GREENBERG TRAURIG, LLP

9  
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11 By:   
12 GENE LIVINGSTON  
13 Attorneys for Cross-Complainants and  
14 Real Parties In Interest  
15 Association of California Insurance  
16 Companies and Personal Insurance  
17 Federation of California  
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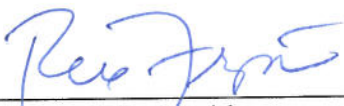
*Poizner v. Office of Administrative Law, et al.*  
Los Angeles County Superior Court Case No. BS 129209

**VERIFICATION**

I, Rex Frazier, am the President of the Personal Insurance Federation of California, a party to this action, and am authorized to make this verification on its behalf. I have read the foregoing Cross-Complaint for Injunctive and Declaratory Relief and know its contents. I am informed and believe and on that ground allege that the matters stated therein are true. The same is true of my own knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

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

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

  
\_\_\_\_\_  
REX FRAZIER, President  
Personal Insurance Federation of  
California

SAC 441,910,442v1 2-3-11

**SUMMONS**  
**Cross-Complaint**  
**(CITACION JUDICIAL-CONTRADEMANDA)**

**NOTICE TO CROSS-DEFENDANT:**  
**(AVISO AL CONTRA-DEMANDADO):**  
INSURANCE COMMISSIONER DAVE JONES

**YOU ARE BEING SUED BY CROSS-COMPLAINANT:**  
**(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):**  
ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES and PERSONAL  
INSURANCE FEDERATION OF CALIFORNIA

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(SOLO PARA USO DE LA CORTE)

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Superior Court of California  
County of Los Angeles

FEB 04 2011

John A. Clark, Executive Officer/Clerk  
By RUCENA LOPEZ Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), o onlándose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
*(El nombre y dirección de la corte es):*  
Los Angeles County Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

SHORT NAME OF CASE (from Complaint): (Nombre de Caso):  
POIZNER v. OAL, et al.

CASE NUMBER: (Número del Caso):  
BS 129209

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:  
*(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es):* Gene Livingston, SBN 44280 (916) 442-1111  
GREENBERG TRAUIG, LLP  
1201 K Street, Suite 1100, Sacramento, CA 95814

**RUCENA LOPEZ**

DATE: February 4, 2011  
*(Fecha)*

Clerk, by \_\_\_\_\_, Deputy  
*(Secretario)* \_\_\_\_\_ *(Adjunto)*

FEB 04 2011

*(For proof of service of this summons, use Proof of Service of Summons (POS-010).)*  
*(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)*



- NOTICE TO THE PERSON SERVED: You are served**
- as an individual cross-defendant.
  - as the person sued under the fictitious name of *(specify):*
  - on behalf of *(specify):*  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other *(specify):*
  - by personal delivery on *(date):*