

May 14, 2014

Via Hand Delivery

The Honorable Shelleyanne W.L. Chang
Sacramento County Superior Court
Gordon D. Schaber Sacramento County Courthouse
720 9th Street
Fourth Floor, Department 24
Sacramento, California 95814

Re: *Mercury Casualty Co. v. Dave Jones, Case No. 34-2013-80001426*

Dear Judge Chang:

I am writing on behalf of Personal Insurance Federation of California, Property Casualty Insurance Association of America, American Insurance Association, National Association of Mutual Insurance Companies, and Pacific Association of Domestic Insurance Companies (hereinafter collectively the Trades). In the Court's tentative ruling on the Trades' Petition for Writ of Mandate (heard May 2, 2014), the Court declined to reach certain issues raised by the Trades and briefed by all parties. The Trades request that if the Court is inclined to entertain those issues and rule upon them, that the Court set a further oral argument to address those questions.

At the hearing on May 2, 2014, the parties addressed the question of whether the Court should reach the issues – the topic of the tentative ruling. The parties did not, however, argue the merits of the questions on which the Court declined to rule. In addition, Consumer Watchdog argued ***for the first time*** that the Trades' Complaint in Intervention did not present the question of whether the Commissioner's regulatory requirement that there must be a hearing in any case in which an applicant pursues Variance 9 (but in no other case) constitutes a denial of due process under the doctrine discussed in *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129 (1976).

For the Court to issue a thoroughly considered opinion, there should be the opportunity for oral argument on the merits of these questions. Oral argument is critical to addressing any matters on which there may have been an issue on which the Court has a concern, which could be easily identified and corrected.

As to Consumer Watchdog's new argument, the Trades maintain that the Complaint In Intervention is sufficiently broad to encompass the facial challenge to Variance 9 on the grounds that the regulations impermissibly burden an applicant's right to a non-confiscatory rate by making Variance 9 the only situation in which an extensive hearing process is compelled. To the extent the Court disagrees, that is easily cured by amendment. There can be no prejudice to the parties, as the question has been fully briefed, with no party raising any question of surprise or prejudice.

Respectfully, the Trades request the opportunity for oral argument limited to the questions on which the Court declined, in the tentative ruling, to rule, should the Court be inclined to reverse the tentative on this point.

Very truly yours,



Vanessa Wells

Partner
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D 650.463.4022

cc: All Parties (see Service List)

1 **PROOF OF SERVICE**

2 I, Ramona Altamirano, declare:

3 I am employed in the County of San Mateo, State of California. I am over the age of
4 eighteen years and not a party to the within action. My business address is Hogan Lovells US
5 LLP, 4085 Campbell Avenue, Suite 100, Menlo Park, California 94025.

6 On May 14, 2014, I served a true copy of the following document(s):

7 **Letter to the Honorable Shelleyanne W.L. Chang**

8 on the interested parties in this action by the following means:

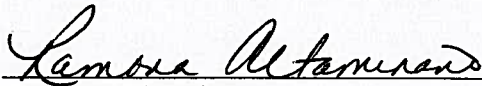
9 **BY MAIL**: I am readily familiar with the business practice for collection and processing
10 correspondence for mailing with the United States Postal Service. I know that the
11 correspondence was deposited with the United States Postal Service in the ordinary course of
12 business on the same day that this declaration was executed. I know that the envelopes were
sealed, with postage fully prepaid, and placed for collection and mailing on this date, following
ordinary business practices, in the United States mail at Menlo Park, California.

13 **BY OVERNIGHT DELIVERY**: I enclosed the documents in an envelope or package
14 provided by an overnight delivery carrier and addressed to the persons listed in the attached
15 service list. I placed the envelope or package for collection and overnight delivery at an office or
a regularly utilized drop box of the overnight delivery carrier.

16 **BY HAND**: by causing personal delivery by an agent of _____, of the
17 document(s) listed above to the person(s) at the address(es) as set forth above.

18 **BY ELECTRONIC SERVICE [E-MAIL]**: I caused the documents to be sent to the
19 persons at the electronic notification addresses listed in the attached service list. I did not receive,
20 within a reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct, and that this declaration is executed on May 14, 2014, at Menlo
23 Park, California

24 
25 _____
26 Ramona Altamirano

SERVICE LIST

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