

1 HOGAN LOVELLS US LLP
Vanessa O. Wells (Bar No. 121279)
2 525 University Avenue, 4th Floor
Palo Alto, California 94301
3 Telephone: (650) 463-4000
Facsimile: (650) 463-4199
4 vanessa.wells@hoganlovells.com

5 Attorneys for Proposed Intervenors
Personal Insurance Federation of California,
6 American Insurance Association, Property Casualty
Insurers Association of America dba Association of
7 California Insurance Companies, National
Association of Mutual Insurance Companies, and
8 Pacific Association of Domestic Insurance
Companies

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12 MERCURY CASUALTY COMPANY,

13 Petitioner and Plaintiff,

14 v.

15 DAVE JONES, IN HIS OFFICIAL
16 CAPACITY AS THE INSURANCE
COMMISSIONER OF THE STATE OF
17 CALIFORNIA,

18 Respondent and Defendant.

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21 CONSUMER WATCHDOG,

22 Intervenor.
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Case No. 34-2013-80001426

Assigned to: Hon. Eugene L. Balonon, Dept. 14

**MEMORANDUM IN SUPPORT OF EX
PARTE APPLICATION FOR AN ORDER
SHORTENING TIME FOR HEARING ON
MOTION FOR LEAVE TO INTERVENE**

**(Cal. Rules of Court, Rule 3.1200 et seq. and
Rule 3.1300(b))**

Date: May 3, 2013

Time: 10:00 a.m.

Dept.: 14

Action Filed: March 1, 2013

1 Concurrent with this *Ex Parte* Application for an Order Shortening Time (the
2 “Application”), the Personal Insurance Federation of California¹ (“PIFC”), American Insurance
3 Association (“AIA”), Property Casualty Insurers Association of America dba Association of
4 California Insurance Companies (“PCI/ACIC”), National Association of Mutual Insurance
5 Companies (“NAMIC”), and Pacific Association of Domestic Insurance Companies (“PADIC”)
6 (collectively the “Trades”) have filed a motion to intervene in this pending writ action (the
7 “Motion”). Mercury Casualty Company (“Mercury”) initiated this writ action through the filing
8 of its Verified Petition for Writ of Mandate And Complaint for Declaratory Relief and Injunctive
9 Relief (the “Petition”), which raises several issues of constitutional law and regulatory
10 construction and application arising from the Insurance Commissioner’s February 11, 2013 Order
11 Adopting Proposed Decision in In the Matter of the Rate Application of Mercury Casualty
12 Company, CDI File No. PA-2009-00009 (the “Order” or the “Commissioner’s Order”).

13 The Trades represent the majority of the insurers in this state subject to Proposition 103.
14 As fully set forth in the Motion and its accompanying Memorandum of Points and Authorities,
15 the determination of these constitutional and regulatory issues is of vital interest to all insurers
16 operating in California subject to Proposition 103 ratemaking and who will be bound by the
17 determinations of this Court in this proceeding. The Trades and their members have made an
18 affirmative effort to coordinate in intervening in this action to avoid multiple interventions,
19 thereby allowing the action to proceed efficiently.

20 The Motion seeking intervention has been timely filed, however the Court’s next available
21 hearing date for a noticed motion is not until September, 2013. Delaying hearing on the Motion
22 for over four months is not feasible, and will work to either exclude the Trades from briefing and
23 hearing on the Petition or will prejudice all parties by forcing a significant delay in the resolution
24 of substantive issues until the Motion is heard. To avoid such harm, the Trades filed this *Ex*
25 *Parte* Application seeking expedited hearing on the Motion in accordance with California Rule of

26 ¹ As a matter of candor, PIFC discloses that Mercury is one of its members. Mercury,
27 however, is involved in this action to represent its own rights as to the specific rate order issued
28 by the Commissioner. It does not appear in a representative capacity on behalf of PIFC or its
fellow PIFC members.

1 Court 3.1300(b). The Trades respectfully submit that good cause exists to expedite hearing on the
2 Motion and request that the Court grant the *Ex Parte* Application.

3 Rule of Court 3.1300(b) provides that on an application for an order shortening time,
4 supported by a declaration showing good cause, the Court may shorten the time for filing and
5 service of papers.² In this context, “The concept of good cause . . . calls for a factual exposition
6 of a reasonable ground for the sought order. The good cause may be equated to a good reason for
7 a party’s failure to perform that specific requirement from which [the party] seeks to be
8 excused.” *Roberts v. Regents of the University of California*, No. A098983, 2003 WL
9 21235535, at *2 (Cal. Ct. App. May 28, 2003) (quoting *Waters v. Superior Court*, 58 Cal. 2d 885
10 (1962)). Here, the Trades seek relief from a September hearing on the Motion, which, though the
11 Motion was timely filed, is the first available date for a hearing under the Court’s noticed motions
12 procedure.

13 Delaying hearing on the Motion for over four months creates a multitude of avoidable
14 problems. The briefing schedule and hearing on the Petition have not yet been set. Delaying
15 hearing on the Motion will force a similar delay for briefing and hearing on the Petition. If
16 intervention is granted, then the Trades will be entitled to participate in setting the briefing
17 schedule and filing briefs on the substantive issues raised by the Petition. While it is possible for
18 the Court to set a briefing schedule prior to hearing the Motion, it would be unfair to the Trades
19 and the other parties to force briefing to begin without resolution on the Trades’ status. If the
20 Motion is granted then the Trades are entitled to fully participate in briefing and hearing on the
21 Petition and other parties are entitled to time to consider and respond to the positions taken by the
22 Trades in briefing and the hearing.

23 Expediting hearing on the Motion will eliminate unnecessary uncertainty as to the parties
24 to this action that are entitled to participate going forward. The Court will be able to move

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26 ² This Rule 3.1300(b) Application for an Order Shortening Time has been styled as an *ex*
27 *parte* Application to enable the Court to consider this request on an expedited basis. In
28 accordance with Rule 3.1300(b), the Trades have submitted the Declaration of Vanessa O. Wells
stating good cause for granting the Application. This Memorandum is submitted out of an
abundance of caution to ensure compliance with Rule 3.1201 governing *ex parte* applications.

1 forward by setting a briefing schedule and hearing date on the Petition that is inclusive of all the
2 parties and eliminates any need for delay in briefing or the hearing while the Motion is pending.
3 Waiting until September to hear the Motion will inevitably cause delay or create administrative
4 problems for the Court and the current parties.

5 For these reasons, good cause exists to grant the *Ex Parte* Application for an Order
6 Shortening Time and to set the Motion for hearing on a date as soon as practicable in accordance
7 with the Court's schedule.

8 Dated: April 26, 2013

Respectfully submitted,

HOGAN LOVELLS US LLP

11 By: 

Vanessa O. Wells

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13 Attorneys for Proposed Intervenors
14 Personal Insurance Federation of California,
15 American Insurance Association, Property
16 Casualty Insurers Association of America dba
17 Association of California Insurance
18 Companies, National Association of Mutual
19 Insurance Companies, and Pacific Association
20 of Domestic Insurance Companies
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