SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, Applicant, v. CALIFORNIA INSURANCE COMPANY, a California corporation, Respondent.	**Case No. 19-CIV-06531** **PROPOSED STATEMENT OF DECISION AND TENTATIVE ORDER AFTER HEARING 8-23-23** Dept. 3 Judge: Hon. Susan L. Greenberg

PROPOSED STATEMENT OF DECISION AND TENTATIVE ORDER APPROVING PROPOSED REHABILITATION PLAN

The following constitutes the Court's Proposed Statement of Decision and Tentative Order pursuant to California Rule of Court, Rule 3.1590 *et seq.*, and subject to the parties' timely objections under the same rules.

INTRODUCTION AND OVERVIEW OF REHABILITATION PLAN

On November 4, 2019, this Court granted the Verified Ex Parte Application of the Insurance Commissioner ("Commissioner" or "Conservator" or "Applicant")[1] under Insurance Code section 1011, subdivision (c),[2] for an Order Appointing Insurance Commissioner as Conservator and Restraining Order ("Conservation Application") placing Respondent California Insurance Company ("CIC")[3] in conservatorship ("Conservation Order"). The Conservation Application alleged that CIC was "in the midst of an attempt to merge with a newly formed New Mexico entity, thereby transferring control of CIC without obtaining the Commissioner's approval as required by law." (Conservation Appl. ¶ 4, citing § 1215.2.) California law would automatically revoke CIC's certificate of authority to transact insurance business upon consummation of this unapproved merger, as the New Mexico entity, a "nonadmitted insurer," could not transact insurance business in California. (Conservation Appl. ¶ 11, citing §§ 700, 701, 1760.1.)

In his Conservation Application, the Commissioner explained that "if CIC is permitted to consummate the illegal merger, CIC policyholders in California will be left holding policies of a non-admitted insurer. Since CIC could not legally service those policies, ***policyholders, including employees with serious work-related injuries and other claimants entitled to vital and necessary insurance benefits, may not have recourse to benefits***." (*Id.* at 4, ¶ 11 [emphasis added].) The Commissioner

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[1] The Insurance Commissioner and the Conservator are the same state official. For clarity, the Court shall refer to him solely as the Commissioner, the parties' briefing shall retain original references to the Commissioner as Conservator or Applicant.

[2] All subsequent statutory citations are to the Insurance Code unless otherwise indicated.

[3] The Court shall solely refer to California Insurance Commission as CIC. However, the parties' briefing shall retain original references to CIC as Respondent.

emphasized that, prior to the unlawful merger attempt, "CIC had established a pattern of flouting regulatory processes designed to protect California policyholders from unfair and deceptive practices," citing CIC's illegal modifications to insurance policies. (*Id.* at 5-6, ¶ 17.)

The Court now considers the Commissioner's Application for Order Approving Rehabilitation Plan ("Plan Application"), setting out the terms under which the conservatorship would be concluded. The Commissioner describes the proposed Rehabilitation Plan as "designed to . . . complete CIC's exit from the state on terms that protect the Company, policyholders, and the public." (Plan Appl., p. 19.) To achieve that goal, he explains, the Plan

> has been structured around an Assumption Reinsurance and Administration Agreement ("Reinsurance Agreement") under which an admitted insurer authorized to write workers' compensation insurance in California will assume CIC's in-force California policies and reinsure the liabilities under expired CIC California policies. CIC will then be permitted to merge with its out-of-state affiliate, CIC II, and will surrender its certificate of authority to write insurance in California without diminishing the rights of policyholders.

(*Ibid.*)

CIC opposes approval of the Rehabilitation Plan on several grounds. First, CIC objects to Plan § 2.6, which incorporates Schedule 2.6. This section concerns litigation arising out of an illegal modification to CIC's insurance policies. (See Background and Part II, *infra*.) Under the Plan, policyholders engaged in such litigation will be offered an opportunity to settle their claims and associated litigation by electing a remedy amoung the choices outlined. Second, CIC objects to Plan § 2.2, which outlines a public bid solicitation procedure for CIC's reinsurer in California. CIC opposes the public bid process on the grounds that its affiliate, Continental Indemnity Company ("Continental") should have a right of first refusal to reinsure or purchase its California business. Finally, CIC opposes the Rehabilitation Plan's inclusion of Connecticut and New York policyholders pursuant to requests filed by the Connecticut Insurance Department and the New York State Department of Financial Services in November 2022.

The Court held two hearings on the Plan Application, on July 25, 2023 and August 23, 2023. The Court has considered all arguments made by all counsel during the hearing. The Court has also considered the pleadings filed in this matter, as well as a number of email briefs sent to the Court and all parties, filed and sent both prior to and after the August 23, 2023 hearing. These email briefs include

but are not limited to the following:

Applicant's Proposed Order Approving Proposed Rehabilitation Plan (received October 16, 2023);

Respondent's Redline Opposition to Conservator's Proposed Order Approving Proposed Rehabilitation Plan (received December 12, 2023);

Respondent's Proposed Order Approving Proposed Rehabilitation Plan Without Sections 2.6 and 2.2 Which Are Not Approved (received December 12, 2023);

Declaration of Shand S. Stephens In Support of Respondent California Insurance Company, Inc.'s Rehabilitation Plan Proposed Order (received December 12, 2023);

Respondent California Insurance Company's Redline Opposition to Conservator's Proposed Order Approving Proposed Rehabilitation Plan (filed December 12, 2023);

Email letter brief from attorney Eric K. Larson (dated August 25, 2023);

Email letter brief from attorney Cynthia J. Larsen (dated September 1, 2023);

Email letter brief from attorney Shand S. Stephens (dated September 1, 2023);

Email letter brief from attorney Shand S. Stephens (dated September 5, 2023);

Email letter brief from attorney Cynthia J. Larsen (dated September 6, 2023), with attachments thereto;

Email letter brief from attorney Shand S. Stephens (dated September 6, 2023);

Email letter brief from attorney Phil Walker (dated September 19, 2023), with attachments thereto, and with Proposed Inclusion in Draft Order;

Email from attorney Cynthia J. Larsen with a redlined version of the Revised Rehabilitation Plan to the draft Proposed Order containing post-hearing revisions (dated October 18, 2023).

Redlined version of the Revised Rehabilitation Plan to the draft Proposed Order containing post-hearing revisions (filed October 16, 2023).

Because the final briefing was filed and received by this Court on December 12, 2023, this matter was under submission to this Court as of December 12, 2023.

After a full review of the pleadings and email letter briefs and consideration of oral argument, the Court adopts its tentative ruling approving the Plan Application. The Court APPROVES the

Insurance Commissioner of the State of California's California Insurance Company Rehabilitation Plan as filed with this Court on October 16, 2023 (attached hereto as Exhibit A), for the reasons enumerated below.

BACKGROUND

As the litigation addressed by Plan § 2.6 predates CIC's conservatorship, the Court first explores the context surrounding those cases. CIC and its affiliates formerly marketed workers' compensation insurance under a program which they called "EquityComp." Workers' compensation insurance policies under EquityComp featured two components: (1) a standard "guaranteed-cost" policy that had been filed with the Commissioner as required by law, and (2) a "Reinsurance Participation Agreement" (RPA) that was not filed with or approved by the Commissioner and altered certain terms of the guaranteed-cost policy, including its pricing. (Ins. Code §§ 11658, 11735 [policy filing requirements]; Holloway Plan App. Decl.[4] ¶ 14.)[5] In 2014, Shasta Linen Supply, Inc., which held a CIC guaranteed-cost policy and an accompanying RPA, filed an appeal with the Commissioner challenging CIC's use of the RPA. An administrative law judge conducted an adjudicatory hearing and concluded that "CIC's EquityComp program and the accompanying RPA constitute a misapplication of the filed rates of CIC in violation of California Insurance Code section 11737" and that "CIC's failure to file and secure approval of EquityComp and the RPA, in violation of Insurance Code section 11658, renders the RPA void as a matter of law." (*Matter of Shasta Linen Supply, Inc.* (June 22, 2016) Cal. Ins. Comm'r, No. AHB-WCA-14-31 (*Shasta Linen*).) The Commissioner adopted the *Shasta Linen* decision and

[4] Joe Holloway is Deputy Insurance Commissioner, the Chief Executive Officer of CDI's [California Department of Insurance] Conservation and Liquidation Office, and Conservation Manager for CIC in conservation. (Holloway Plan App. Decl., ¶ 2.)

[5] Citations to the parties' filings in support of and opposition to the Plan Application are referenced as follows: Exhibits, declarations, and requests for judicial notice filed by the Conservator in support of the October 19, 2020, Plan Application are designated by "Plan Appl.," as in "Holloway Plan Appl. Decl." Exhibits, declarations, and requests for judicial notice filed by CIC with its November 10, 2022, Opposition to Conservator's Application for Approval of Rehabilitation Plan are designated by "Opp.," as in "Silver Opp. Decl." Similarly, filings accompanying the Conservator's February 10, 2023, Reply to Respondents Opposition to Application for Approval of Rehabilitation Plan are designated by "Reply"; filings accompanying CIC's February 16, 2023, Sur-Reply to the Conservator's Reply are designated by "Sur-Opp."; and the Commissioner's Reply to Respondent's Sur-Reply is designated as "Reply to Sur-Opp."

designated it a precedential decision, permitting its citation as authority in subsequent Department of Insurance ("Department") hearings. [6] (*Id.* at 70 [citing Gov. Code, § 11425.60, subd. (b)]; see also Settlement Agreement between the California Department of Insurance, California Insurance Company and *Applied Underwriters Captive Risk Assurance Company, Inc.*, dated June 7, 2017 ("Shasta Linen Settlement Agreement"), Reply Compendium, Exh. 5 at 2 [CIC agrees to precedential effect of *Shasta Linen* decision].)

Shasta Linen expressly did not address the equitable remedies available to policyholders in a court of law. (*Id.* at 68 ["Any additional remedies to which Shasta Linen is entitled based upon CIC's conduct are outside the scope of this proceeding."].)[7] Numerous cases have since been filed by policyholders or by CIC and its affiliates, which are collectively known as the "RPA litigation."

With this context, the Court turns to the facts of this case in greater detail.

A. CIC and Its Affiliates

CIC is a property and casualty insurance company that holds a certificate of authority issued by the Commissioner authorizing it to transact workers' compensation business in the State of California. (Holloway Plan Appl. Decl., ¶ 5; see generally Ins. Code §§ 700, 701, 717 [outlining certificate of authority requirement and issuance criteria].) CIC is a subsidiary of North American Casualty Company ("NACC"), which in turn is owned by AU Holding Company ("AU Holding"). Stephen M. Menzies is the founder, president, and sole shareholder of AU Holding. (Holloway Plan Appl. Decl. ¶ 5.) CIC marketed the RPA principally through its affiliate Applied Underwriters Inc. ("AUI"). Another affiliate, Applied Underwriters Captive Reinsurance Assurance Company ("AUCRA"), is an admitted insurer who serves as the purported "reinsurer" under the RPA. (*Shasta Linen, supra,* at 10-11.)

In *Shasta Linen*, the Commissioner found that CIC, AUI, and AUCRA were a joint enterprise rather than separate entities. (*Shasta Linen, supra,* at 49.) Two California Courts of Appeal have made

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[6] The Court shall refer to the California Department of Insurance solely as the Department. Evidence referencing the Department as "CDI" shall retain the original nomenclature.

[7] The Supreme Court has confirmed that where the Insurance Commissioner has jurisdiction to adjudicate disputes over charged rates, "administrative proceedings are not a ratepayer's exclusive remedy for the charging of an unfiled rate." (*Villanueva v. Fidelity National Title Co.* (2021) 11 Cal.5th 104, 126.)

similar findings. (*Nielsen Contracting, Inc. v. AUI* (2018) 22 Cal.App.5th 1096, 1116-1117 (*Nielsen*) [record on appeal supported conclusion that affiliated entities should be considered as one because they were "so enmeshed" and "intertwined"]; *Luxor Cabs, Inc. v. AUCRA* (2018) 30 Cal.App.5th 970, 985-986 (*Luxor Cabs*) [same].) As evidence of a joint enterprise, the Commissioner noted that AUI generated the marketing material for the EquityComp program and that AUCRA executed the RPA as a "profit-sharing" plan to override critical terms of the CIC-provided guaranteed-cost policy. (*Shasta Linen, supra,* at 26-31.)

The pertinent evidence in this case supports the Commissioner's conclusion in *Shasta Linen*. CIC and the affiliates worked collectively under shared management to implement the EquityComp program, and the companies continue to work in tandem. Under the Management Services Agreement between CIC and AUI, AUI comprehensively manages CIC's affairs by: (1) providing actuarial and claims services in connection with CIC's policies; (2) providing underwriting services; (3) paying CIC's bills and collecting its receivables; (4) managing CIC's investments; and (5) performing accounting services, including filing CIC's required financial statements and tax returns. (Holloway Plan Appl. Decl. ¶ 12, Exhs. B, C.) AUI provides CIC "necessary and appropriate personnel, administrative, office and building services." (*Id.*, Exh. B at 3.) CIC directs and supervises AUI under the terms of the Management Services Agreement. (Holloway Plan Appl. Decl. Exh. B at 1.) As of the filing of the Plan Application, the Nebraska Secretary of State's website listed Menzies, the indirect owner of CIC, and Jeffrey Silver, CIC's Secretary and General Counsel, as the only directors of AUI. (Holloway Plan Appl. Decl. ¶ 11.)

B. The Guaranteed-Cost Policy and the Reinsurance Participation Agreement

Employers usually purchase workers' compensation insurance as a guaranteed-cost policy under which the policyholder pays a fixed premium and the insurer reimburses all covered workers' compensation losses. In loss-sensitive policies, on the other hand, the employer's premium for the policy year depends on the insured's actual cost of claims. (Muzzarelli Plan Appl. Decl. ¶ 12.)[8] As the Commissioner explained in *Shasta Linen*:

[8] Giovanni Muzzarelli is a Senior Casualty Actuary at the Department.

> By definition, loss sensitive plans are 'profit-sharing.' Generally, carriers market loss sensitive programs exclusively to large employers. In fact, many jurisdictions restrict the sale of loss sensitive programs to employers whose annual premiums exceed $500,000. Large employers are typically better able to cope with loss and experience modification variations and are in a better position to control claims costs. … Loss sensitive programs are issued as endorsements to guaranteed cost policies and require the Insurance Commissioner's approval.

(*Id.* at 15-16.) The EquityComp RPA was a loss-sensitive program, sold without the Commissioner's approval in conjunction with the CIC guaranteed-cost policy.

CIC, AUI, and AUCRA intentionally failed to seek the Commissioner's approval for the RPA. Indeed, they patented the RPA as a vehicle to avoid insurance regulation, and touted the program's freedom from state regulatory constraints in the patent application. (*Shasta Linen, supra,* at 24.) The Commissioner found that AUI "structured EquityComp and the RPA to circumvent state regulators." (*Id.* at 50.) As the court of appeal subsequently explained in *Luxor Cabs*, *supra,* 30 Cal.App.5th at 986:

> Obviously, allowing an insurer to circumvent the comprehensive regulatory structure applicable to the issuance of workers' compensation insurance in this state simply by amending its approved policy forms through a side agreement with a subsidiary is contrary to the public policy underlying California's workers' compensation law and cannot be countenanced.

(See also *Nielsen Contracting*, *supra,* 22 Cal.App.5th at 1118 [finding that failure to file the RPA "prevent[ed] crucial regulatory oversight and thus render[ed] the unfiled agreement unlawful and void as a matter of law"]; accord *Minnieland Private Day School, Inc. v. Applied Underwriters Captive Risk Assurance Company, Inc.* (4th Cir. 2019) 913 F.3d 409, 423.) The design of the EquityComp program attracted attention nationally. Regulators in Wisconsin, Vermont, New Jersey, and New York each took steps to stop sale of policies involving RPAs. Some cited CIC and its affiliates for violating prior orders to halt such sales and imposed penalties of up to $3 million. (Holloway Plan Appl. Decl. ¶¶ 18.a-d.)

The Commissioner found that the EquityComp RPAs departed in material ways from industry-standard loss-sensitive programs, as the RPAs employed nonstandard terminology[9] and gave CIC "sole discretion" to determine several variables upon which policyholders' charges were based. (*Shasta Linen, supra,* at 22-23 ["non-linear retrospective plan" resulted in "'fundamentally new premium structure'"]; 29-31 ["loss pick containment" formula for fees created astronomical fees on low-loss policies]; 31-32 [unusual three-year term, with severe penalties for early cancellation or non-renewal]; 32, 56 [choice-

[9] The name "Reinsurance Participation Agreement" is itself a misnomer. CIC conceded in *Shasta Linen* that the RPA was not in fact a reinsurance agreement. (*Shasta Linen, supra,* at 25.)

of-law and dispute resolution procedures superseded guaranteed-cost policy provisions and required application of Nebraska law and binding arbitration in the British Virgin Islands]; 33-34 [run-off loss development factors," created valuation method "not used by other carriers"]; 34-35 [close-out distribution precluding return of amounts due policyholders for up to seven years after policy expiration at CIC's "sole discretion"].)

Moreover, policyholders that executed the RPA were unlikely to be fully aware of its terms. CIC and its affiliates withheld copies of prospective policyholders' RPAs under after policyholders had paid to enroll in the EquityComp program. At that point, refusal to sign the RPA would have resulted in cancellation of their workers' compensation coverage. (*Shasta Linen*, *supra,* at 25, 27-28; Lichtenegger Plan Appl. Decl. ¶¶ 26, 32.[10]) The RPA that policyholders signed differed materially from the representations made in the marketing materials, including as to cost of coverage. (*Id.* at 27 [Program Summary & Scenario document provided to potential policyholders included a "single-year table [that] does not represent the one-year cost of the program."].)

Obfuscation of the RPA became particularly problematic because the agreement employed undefined and non-standard terms when describing how to calculate premiums, deposits, or other payments due. It thus became virtually impossible for policyholders to calculate their monthly premiums, budget for workers' compensation insurance, or verify charges based on the RPA. (*Shasta Linen, supra,* at 29-30; Lichtenegger Plan Appl. Decl. ¶¶ 15, 20, 28-29.) The lack of transparency in billing especially concerned the Commissioner in light of the potential for billing errors; indeed, AUI ultimately conceded that Shasta Linen's bill included such billing errors. (*Shasta Linen* at 38.) Policyholders who sought assistance regarding billing errors were often stonewalled by company representatives, who claimed that billing calculation methodology was proprietary. (Lichtenegger Plan Appl. Decl. ¶¶ 20, 29.) This forced policyholders to either pay the monthly bill or face cancellation of their workers' compensation insurance. (See *id.* at ¶¶ 6, 29-30, 47.) Policyholders that were unable to pay despite the lack of transparency in monthly billing often had no choice but to execute promissory notes extended by AUI to spread out payments. (See *Shasta Linen* at 38; Lichtenegger Plan Appl. Decl.

[10] Larry Lichtenegger is a California attorney who has represented fifty-one business clients in actions against AUI, AUCRA, and CIC.

¶¶ 6, 47.)

The RPA also incentivized CIC, AUI, and AUCRA to settle claims related to employee injuries for more money than they should have been paid according to industry practices and to over-reserve case funds at policyholders' expense.[11] (Muzzarelli Plan Appl. Decl., ¶¶ 19, 29, 42 .) CIC has not disputed Muzzarelli's explanation of the financial incentives created by the RPA, and evidence suggests that CIC and its affiliates have yielded to those incentives by keeping claims open to reap investment income on policyholder funds. (Lichtenegger Plan Appl. Decl. ¶¶ 43, 56-57.) Policyholders have also reported that CIC failed to pursue subrogation when requested or investigate employees' claims of injury. (Lichtenegger Plan Appl. Decl. ¶¶ 55, 58, 62; *Shasta Linen, supra,* at 38 [AUI's inaction regarding request to investigate potential fraud cost policyholder over $100,000.]) Then, the RPA penalized dissatisfied EquityComp policyholders by applying much higher loss development factors (LDFs) to the claims of employers that chose not to renew their policies after the three-year active term, essentially penalizing them for non-renewal. (*Shasta Linen* at 58.) The Commissioner considered such a penalty akin to restricting payment of a policyholder dividend due to the policyholder's failure to renew a policy, which is considered a "coercive and illegal … unfair practice." (*Id.* at 58.)

This scheme frustrated policyholders' profit-sharing expectations. In *Shasta Linen*, the ALJ twice ordered CIC to provide the number of participants that had received profit-sharing distribution, but CIC refused to comply, leading the ALJ to draw the adverse inference that there never had been any profit-sharing distributions. (*Shasta Linen, supra,* at 35.) CIC has not disputed that inference in this Court.

C. The RPA Litigation

As CIC's Conservator, the Commissioner has reviewed all EquityComp RPA litigation and has identified three categories of cases. (Holloway Plan Appl. Decl. ¶ 15; Larsen Reply Decl.[12], ¶¶ 10-41.) The first category involves policyholder-initiated lawsuits, arbitrations, and appeals initiated in the Department's Administrative Hearing Bureau. These policyholders allege the RPA's illegality and seek

[11] Over-reserving occurs when an insurer holds more funds in reserve than its estimate of future loss payments related to an individual claim rather than disbursing the excess funds to the policyholder. (See Muzzarelli Reply Decl. ¶ 42.)

[12] Cynthia Larsen is a California attorney and counsel of record for the Conservator.

to cancel their policies, thereby receiving a refund of their excess premium. (Holloway Plan Appl. Decl. ¶ 15; Lichtenegger Plan Appl. Decl. ¶¶ 6, 25; Larsen Reply Decl. ¶ 19.) The Commissioner argues that policyholders have been compelled into litigation to receive their refunds because AUCRA leveraged its discretion under the RPA to retain excess premiums. (Lichtenegger Plan Appl. Decl. ¶¶ 18, 22, 33.) Once policyholders receive awards in their favor, CIC and affiliates then pursue costly and lengthy appeals against those awards. (See Lichtenegger Plan Appl. Decl. ¶¶ 37, 51; Larsen Reply Decl. ¶¶ 17, 19, 23-26, 29.) The second category consists of the cross-complaints which AUCRA has filed in the first category of cases in order to enforce the RPA's terms, despite Court of Appeal precedent that has concluded that the RPA is illegal. (Lichtenegger Plan Appl. Decl. ¶ 6; Larsen Reply Decl. ¶¶ 14-15; see, e.g., *Luxor Cabs, supra,* 30 Cal.App.5th at 986; *Nielsen, supra,* 22 Cal.App.5th at 1118; *Jackpot Harvesting, Inc. v. AUI* (2019) 33 Cal.App.5th 719 (*Jackpot*).) CIC has also filed parallel cross-complaints alongside AUCRA to enforce underlying guaranteed-cost policies in the event that the EquityComp RPA is found unenforceable. (Lichtenegger Plan Appl. Decl. ¶ 6.)

The third category of litigation concerns parallel litigation initiated by AUI in Nebraska to enforce promissory notes signed by policyholders who could not afford the charges imposed by the RPA. (Lichtenegger Plan Appl. Decl. ¶¶ 6, 47, 49; Larsen Reply Decl., ¶¶ 23-27, 37.) Although these cases are almost always dismissed for lack of personal jurisdiction, the Commissioner argues that the threat of costly litigation has deterred policyholders from asserting the illegality of the RPA. (Lichtenegger Plan App. Dec., ¶¶ 46-47; Larsen Reply Dec., ¶ 37.)

D. CIC's Attempted Merger Into a New Mexico Affiliate

The Ninth Circuit has summarized the procedural history of this attempted merger as follows:

> In January 2019, Steven Menzies, as Chief Executive Officer of Applied Underwriters, Inc. and as President of CIC I, entered into an agreement with Berkshire Hathaway to purchase Berkshire's controlling interest in CIC I (the "Agreement"). The Agreement included a $50 million "breakup fee" were the transaction not consummated by September 30, 2019.
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> California Insurance Code § 1215.2(d) requires the California Insurance Commissioner to approve any sale (or merger) of a controlling interest in an admitted California insurer, and further provides the Commissioner with 60 days to approve or disapprove such transactions upon submission of the information concerning the transaction required by § 1215.2(a). These required submissions are known as "Form A" submissions. On April 9, 2019, Menzies, acting on behalf of CIC I, submitted to the California Department of Insurance ("CDI") his first "Form A," which detailed the proposed Agreement and sought official approval. However, upon review, the CDI requested further information concerning the Agreement, requiring Menzies to withdraw the first Form A submission

and to submit a second Form A on June 12, 2019. After this second Form A submission was found unsatisfactory, Menzies submitted his third (and final) Form A submission concerning the Agreement on September 7, 2019.

When it became clear the Agreement would not be approved by the Commissioner in time to avoid the $50 million "breakup fee," Menzies attempted to avoid the California regulatory process altogether by consummating the Agreement without CDI approval. Menzies sought to effect a merger (the "Merger") between CIC I, which he now purported to control, and a newly-formed New Mexico corporation, Appellant California Insurance Company ("CIC II"). This newly formed corporate insurer was not subject to California insurance regulations.

Menzies negotiated a ten-day Agreement deadline extension with Berkshire, at a cost of $10 million. On October 9, 2019, one day before the extended deadline was set to expire, the CDI notified Menzies that if the Merger were to be consummated without the approval of the CDI, "[CIC I] will cease to exist and [CIC II will be] an unlicensed insurer [ ] precluded from transacting the business of insurance in California." The uncertain fate of the Merger notwithstanding, the Agreement between Berkshire and Menzies closed on October 10, 2019, with CIC I becoming wholly owned by Menzies.

On November 4, 2019, before the CIC I/CIC II Merger could be completed, and without notice given to Appellants, the Commissioner filed an ex parte conservation application in the Superior Court of San Mateo which sought "an order appointing him as conservator of [CIC I]." The conservation application was based on the Commissioner's allegation that Menzies had not "filed and obtained written approval of the Commissioner" to consummate the Merger, in violation of California Insurance Code § 1215.2(d).

Also on November 4, 2019, again without any notice to Appellants, the Superior Court granted the Commissioner's conservation application, appointing California Insurance Commissioner Ricardo Lara as the Conservator of CIC I. In justifying lack of notice to Appellants, the Superior Court explicitly found that the Commissioner has ... established good cause to believe that the State of California would be prejudiced were it to provide respondent advanced notice of this proceeding in that [CIC I] has within its authority power to at any time complete the ostensible consummation of the transaction, which would have the effect of at least forfeiting [CIC I's] certificate of authority, rendering California policyholders ostensibly insured by an out-of-state insurer without authority to transact insurance in California.

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CIC I subsequently contested, unsuccessfully, the grounds upon which the conservatorship was instituted. Specifically, on March 12, 2020, CIC I filed an application to vacate the conservatorship with the Superior Court, arguing that: 1) the conservatorship was obtained under false pretenses; 2) the conditions cited for imposing the conservatorship no longer existed; 3) the Commissioner acted arbitrarily, capriciously, and in bad faith; and 4) the conservatorship continues to harm CIC I. After an August 6, 2020 hearing at which CIC I appeared by counsel, the Superior Court denied CIC I's application to vacate the conservatorship on August 11, 2020, for the following reasons:

> Respondents attempted to take [CIC I] and its assets out of California via a merger without adequate protection of policyholders and the public and the Conservatorship was ordered on those grounds. Respondents have failed to demonstrate that the conditions necessitating conservation no longer exist. In light of Respondent's prior conduct, the Conservation Order ensures that Respondents do not again attempt to take [CIC I] and its assets out of California

> ... [and] the Commissioner's preference to pursue a Rehabilitation Plan [for CIC I] is reasonable and sufficient under the circumstances.

Following this denial, CIC I filed an application for interlocutory appellate review with the California Court of Appeal, which was also denied. The record does not demonstrate whether a writ was sought from the California Supreme Court. On October 19, 2020, the Commissioner filed a proposed Rehabilitation Plan ("Rehabilitation Plan") with the Superior Court which articulated the terms he would accept to end the conservatorship of CIC I. CIC I has refused to accept the Commissioner's stated terms, so the conservatorship proceedings remain ongoing.

After CIC I had unsuccessfully challenged the bases of the conservatorship in state court, Appellants Applied and CIC II filed separate actions in federal court, asserting causes of action under 42 U.S.C. § 1983 alleging various constitutional violations ("the federal actions"). Appellants sought, among other forms of relief, orders "declaring the Commissioner's actions, as alleged, violate [Appellants'] rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution." Appellants also sought orders "directing the Commissioner to take all necessary steps to end [CIC I's] conservatorship pursuant to California Insurance Code § 1012, and enjoining the Commissioner from continuing the conservation." The district court dismissed both actions pursuant to Federal Rule of Civil Procedure 12(b)(1), with each order holding that the district court lacked jurisdiction to hear the cases under both the "prior exclusive jurisdiction" rule and the *Younger* abstention doctrine.

(*Applied Underwriters, Inc. v. Lara* (9th Cir. 2022) 37 F.4th 579, 585–587, *cert. denied* (2023) 143 S.Ct. 748 [affirming "the district court's dismissal of the federal actions"].)

Additionally, on October 7, 2019, the Department received a phone message from the New Mexico Superintendent's Office informing them that he was going to hold a hearing on approval of the merger, which he held on October 9, granting a New Mexico Certificate of Authority to CIC II and approving its acquisition of CIC. (*Id.* at ¶¶ 10, 12 & Exh. A.) CIC points out that Department representatives attended the New Mexico hearing telephonically and did not object. (Silver Opp. Decl. ¶¶ 64, 66.) However, the Commissioner explains that under the national system of insurance regulation, whether or not New Mexico wanted to give its approval to CIC II acquiring CIC, California's Commissioner would also need to approve the merger. (Reporter's Transcript of Proceedings (RT), Aug. 23, 2023, 127:13-128:19; § 1215.2.) The merger could not lawfully take place without California's approval of CIC being acquired, irrespective of New Mexico's approval. (*Ibid.*) The Commissioner also points out that on the evening of the October 9 hearing, the Department wrote Silver a letter advising

him that

> if the merger by and between CIC and California Insurance Company II is completed without obtaining the prior approval of the California Insurance Commissioner as required by California Insurance Code Section 1215.2 and 1011(c), the applicant will be in violation of California law. Additionally, once the merger is completed, CIC will cease to exist and California Insurance Company II, as an unlicensed insurer is precluded from transacting the business of insurance in California from and after the effective date of the merger unless and until it becomes admitted in California.

(Letter dated October 9, 2019, from Department attorney Laszlo Komjathy, Jr. to Jeffrey Silver regarding CIC Form A, Opp. Compendium, Ex. 86, p. 2.)

Following the New Mexico action, Menzies proceeded to close the Berkshire Hathaway buyout and the acquisition of CIC and other affiliated companies without approval of the California Form A application. (Holloway Plan Appl. Decl. ¶ 26.) At that point, were CIC to have filed with the California Secretary of State a certificate of merger, the merger of CIC into CIC II would have been completed (Conservation Appl. ¶ 13, citing Corp. Code, § 1108, subd. (d)), and CIC's Certificate of Authority to transact the business of insurance in California would have been revoked by operation of law, in which case "CIC policyholders in California will be left holding policies of a non-admitted insurer. Since CIC could not legally service those policies, policyholders, including employees with serious work-related injuries and other claimants entitled to vital and necessary insurance benefits, may not have recourse to benefits." (Conservation App., ¶ 11.) The Commissioner therefore sought the Conservation Order under Insurance Code section 1011, subdivision (c), which authorizes him to take over the business of an insurer that "has transferred, or attempted to transfer, substantially its entire property or business or, without consent, has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person."

The next day, the Conservation Order was served on CIC through service on Silver as Secretary of CIC at the company's offices in Omaha, Nebraska, preventing consummation of CIC's merger into the New Mexico affiliate and preserving its licensure as holder of a California Certificate of Authority. (Status Report No. 1 to the Court (July 30, 2020) at 2.)

E. Procedural History of the Conservation

Following issuance and service of the Conservation Order, on January 22, 2020, CIC filed a Verified Application to Vacate the November 4, 2019, Order Appointing Insurance Commissioner as

Conservator. That application was denied by the Court following a hearing on August 6, 2020, and an Order to that effect was entered on August 11, 2020. On October 2, 2020, CIC petitioned the First District Court of Appeal for a writ of mandate seeking an order directing this Court to set aside its denial of the verified application to vacate and seeking an interlocutory stay of the conservation proceedings. On October 10, 2020, the Court of Appeal denied the request for a stay and directed the Commissioner to file preliminary opposition to the petition, which the Commissioner filed on November 2, 2020. The Court of Appeal denied CIC's petition on November 25, 2020. (Order Denying Petition, 11/25/2020, *California Insurance Company v. Superior Court for the County of San Mateo* (Ct. App. 1st Dist., Div. 4, No. A161049.)

On July 30, on the motion of the Commissioner, this Court issued its Order Setting Briefing Schedule, Hearing Date, and Procedures for Conservator's Application for Order Approving Rehabilitation Plan (Procedural Order). Pursuant to the Procedural Order, on October 27, 2022, the Commissioner gave written notice of the conservation to policyholders and other interested parties. (Notice to Policyholders, Claimants, Creditors, Shareholders, and All Other Persons or Entities Interested in California Insurance Company in Conservation, 10/27/2020.) The Order set dates for the Commissioner to file his proposed rehabilitation plan, for CIC to file its opposition, and for the Commissioner to file a reply. Those dates were revised several times, generally on stipulation of the parties. On or before January 4, 2021, interested parties filed comments with the Court, as provided by the Order.

In July 2020, CIC served discovery on the Commissioner without seeking leave of Court as required by ¶ 17 of the Conservation Order. On September 15, 2020, the Court granted the Conservator's Motion to Enforce, Motion to Quash, and Motion for a Protective Order on that ground. On March 11, 2021, CIC filed a Motion for Leave to Conduct Discovery, which the Court granted on April 26, 2021.

On October 29, 2020, CIC filed a special motion to strike the Conservation Application (anti-SLAPP motion) pursuant to Code of Civil Procedure section 425.16, to which the Commissioner responded on December 30, 2020, and Respondent filed a reply on January 6, 2021. The Court's Order Denying Anti-SLAPP Motion to Strike was entered on February 26, 2021.

On October 20, 2020, CIC affiliates AUI and ARS filed suit in the United States District Court

for the Eastern District of California against the Commissioner, seeking the federal court to enjoin the Commissioner from continuing the conservation and to end CIC's conservatorship. (*Applied Underwriters, Inc. v. Lara* (E.D. Cal. 2021) 530 F.Supp.3d 914.) A second suit in the same court was brought by CIC II on January 6, 2021, effectively seeking the same relief against this conservation. (*California Insurance Company v. Lara* (E.D. Cal. 2021) 547 F.Supp.3d 908.) Both cases were dismissed by the district court and the Ninth Circuit Court of Appeals affirmed. (*Applied Underwriters, Inc. v. Lara* (9th Cir. 2022) 37 F.4th 579, *cert. denied* (2023) 143 S.Ct. 748.)

Pursuant to the Procedural Order, as revised by Court orders, the Application presently before the Court was timely filed on October 19, 2020. On January 4, 2021, the Court received a Statement in Support of the Plan by BSA Framing, Inc., Moss Management Services, Inc., Platinum Security, Inc., and E.C. Group, Inc.; a Declaration in Support of Approval of the Plan by Ronald A. Groden; and a Notice of Non-Party Papers by CIC and Declaration by Jeffrey Silver attaching letters of opposition to the Plan. CIC's Opposition was timely filed on November 10, 2022, to which the Commissioner timely replied on February 10, 2023. CIC also filed a Request for Leave to File Supplemental Briefing and Proposed Supplemental Briefing on December 19, 2022. Separately, CIC was granted leave to file a Sur-Reply dated February 17, 2023, and the Conservator was granted leave to Reply to CIC's Sur-Reply, which was filed on February 22, 2023.

F. Conduct of CIC's Management During Conservation

Rather than wholly displacing the pre-conservation management, the Commissioner "has permitted CIC personnel to continue to perform day-to-day operations, subject to the oversight of the Conservator and his representatives." (Holloway Plan Appl. Decl. ¶ 7.) The Commissioner has described to the Court several instances in which the CIC management took action that he found to have violated the Conservation Order, including taking steps to initiate the transfer of CIC policies to an affiliate (Holloway Reply Decl. ¶¶ 6-7; December 4, 2020, Cease-and-Desist Letter from Joseph Holloway to Jeffrey Silver (December 2020 Cease-and-Desist Letter), Reply Compendium, Exh. 90) and issuing a $20 million uncollateralized loan to one of its affiliates without authorization from the Court or the Commissioner (Holloway Plan Appl. Decl. ¶ 7). The Commissioner has also advised the Court of issues regarding CIC's audited financial statements following the sudden resignation of the audit, tax, and

consulting firm that served as auditor for a combined independent audit of CIC and its affiliates after indicating it was unable to obtain "'timely and accurate information regarding significant related-party transactions, including information necessary to determine if receivables with related parties are collectible and admissible' and 'continuing with the engagement would have violated [RSM's] client acceptance and retention standards." (Conservator's Status Report Regarding Additional Management Controls (Sept. 30, 2022), at 2-3.)

G. The Requests of the States of New York and Connecticut

The initial proposed Plan, filed in 2020, only addressed the disposition of CIC's California insurance policies and RPA litigation involving California policyholders. However, in 2022, the States of Connecticut and New York wrote to the Commissioner to request that CIC policies held by their residents be included in the assumption reinsurance arrangements of Plan § 2.2. (Conservator's Notice of Submission of Requests by the States of Connecticut and New York for Inclusion of Their Policies in the Rehabilitation Plan, Exhs. A, B.) Both states noted that CIC II is not licensed to transact the business of insurance in their states, placing policyholders and their employees at risk of losing insurance coverage when the Merger is completed.

STANDARD OF REVIEW

As Conservator, the Commissioner has broad authority to conduct CIC's affairs in the interest of the conserved estate, its policyholders, and the public. (Ins. Code §§ 1037, 1043; *State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1302; *Jones v. Golden Eagle Ins. Corp.* (2011) 201 Cal.App.4th 139, 146.) This authority includes the power to rehabilitate CIC, subject to this Court's approval of a rehabilitation plan. (Ins. Code § 1043.) The Court reviews the proposed Rehabilitation Plan for abuse of discretion, to ensure that the Commissioner exercises the police power of the State in a manner "reasonably related to the public interest" and is not "arbitrary or improperly discriminatory." (*Carpenter v. Pacific Mut. Life Ins. Co. of California* (1937) 10 Cal.2d 307, 331 (*Carpenter*).) A proposed plan is arbitrary if it is "unsupported by a rational basis, [] contrary to specific statute, [involves] a breach of the fiduciary duty of the conservator as trustee, or improperly discriminatory." (*In re Executive Life Ins. Co. v. Aurora Nat. Life Assurance Co.* (1995) 32 Cal.App.4th 344, 358

(*Executive Life*).) This standard requires deference to the Commissioner's "executive judgment" as to his proposed plan of action given the facts at hand. (*Commercial Nat. Bank v. Sup. Ct.* (1993) 14 Cal.App.4th 393, 398.)

The Court notes that in this case, many of the facts cited by the Commissioner are based on findings in an adjudicatory Department hearing conducted by an administrative law judge in *Shasta Linen*, at which parties were represented, testimony and documentary evidence was received, and express findings and conclusions were made in a decision the Commissioner designated as precedential. Such findings provide a rational basis for actions based on them. Legal conclusions are reviewed by the Court independently, with appropriate deference to the expert agency's construction of the statutes it is empowered to enforce. (See *PacifiCare Life & Health Ins. Co. v. Jones* (2018) 27 Cal.App.5th 391, 417 ["careful consideration, combined with the Commissioner's expertise in the area, weighs in favor of according significant deference to the Commissioner's interpretation of [statutory] terms"].)

ANALYSIS

The parties dispute two primary components of the Rehabilitation Plan: Plan § 2.2, which contemplates a public bid solicitation process for CIC's reinsurer of California policies, and Plan Schedule 2.6 (incorporated as Plan § 2.6), which empowers CIC's California policyholders to settle their RPA claims prior to the transfer of their policies to the selected reinsurer. The Court evaluates each component in turn.

I. Section 2.2: The Assumption Reinsurance and Administration Agreement

A. The Commissioner Has Authority to Reinsure Policies of a Conserved Business

As Conservator, the Commissioner may reinsure the business of a conserved company. (Ins. Code § 1043; see also § 1037, subds. (d) & (e).) Assumption reinsurance agreements are commonly used in the insurance industry to transfer policies and liabilities from one insurance company to another. (Holloway Plan Appl. Decl. ¶ 22.) Where a company seeks to withdraw from the California insurance market, the Insurance Code specifies that a departing insurer must reinsure its policies before exiting the state. (Ins. Code § 1071.5 ["Every insurer which withdraws as an insurer . . . from this State shall, prior to such withdrawal, discharge its liabilities to residents of this State . . . [and] shall cause the

primary liabilities under such policies to be reinsured and assumed by another admitted insurer."].) Prior to cancelling the departing insurer's California certificate of authority, the Commissioner must examine the insurer's books and records to confirm that the insurer has no outstanding liabilities to California residents or policies which have not been reinsured by an admitted insurer. (*Id.* at § 1072.) While the Commissioner may waive this requirement in his discretion if a departing company is solvent, he is not required to do so. (*Ibid.*) Moreover, as federal law reserves to the states the authority to regulate the business of insurance, the Commissioner may include out-of-state policies in reinsurance agreements pertaining to a domiciled insurer. (See 15 U.S.C. §§ 1011-1015.)

B. The Assumption Reinsurance Agreement Has a Rational Basis

Exhibit A to the Plan sets out the form of this Assumption Reinsurance Agreement. The Commissioner will invitie qualified insurers to bid on CIC's in-force policies and the liabilities incurred under expired policies. Expressions of interest must indicate the financial terms under which the bidder would agree to assume the portfolio. (Plan § 2.2, subd. (a)(2).) The Commissioner will retain a qualified actuary to evaluate the accuracy of the information provided. (*Ibid.*) The Commissioner may then negotiate policy terms before selecting the reinsurer, taking into consideration the interests of policyholders, creditors, and shareholders consistent with the public interest. (*Id.* at § 2.2, subd. (a)(4).) Appointment of CIC's reinsurer will require Court approval. (*Id.* at § 2.2, subd. (a)(7).) Upon Court approval, the Commissioner will sell CIC's portfolio to the reinsurer, with net proceeds of the sale going to CIC. (Plan Appl. at 22.) In exchange for assuming CIC's liabilities, the reinsurer will receive all future premiums on active policies plus the unearned premium reserves attributable to future coverage. (See Muzzarelli Plan Appl. Decl. ¶ 18 [premium reserves are unearned where attributable to future coverage].) The reinsurer will also be assigned CIC's rights under third-party reinsurance agreements which cover CIC's liabilities that are to be reinsured. (Plan Appl. at 22.)

If the Commissioner does not find any prospective insurer to be qualified to reinsure CIC's portfolio, the Plan permits the Commissioner to consider any expressions of interest from CIC affiliates. (Plan Appl. at 21.) CIC has indicated that its affiliate Continental, which is operated by Menzies as President/CEO and Silver as Secretary, with both individuals serving as Directors (Plan Appl. RJN, Exh. 7), is prepared to assume the portfolio of policies (Holloway Plan Appl. Decl. ¶ 24). The Commissioner

has determined that it would be inappropriate to shift CIC's existing policies to Continental, as Continental and CIC are operated by the same management. (Plan Appl. at 21.) Rather, the Commissioner would require that applicants who are affiliates of CIC, including Continental, to contract for claims administration with an independent third-party administrator ("TPA") appointed by the Commissioner as Conservator. (Plan § 2.2, subd. (a)(3), (a)(5); Holloway Plan Appl. Decl. ¶ 24.) This requirement is borne of the Commissioner's concerns regarding the integrity of CIC's management and ongoing claims-handling issues with policyholders. These concerns provide a rational basis for the assumption reinsurance agreement and TPA described in Plan § 2.2, as discussed further below.

C. The Plan's TPA Provision Is Not Arbitrary.

1. Substantial Evidence Supports the Commissioner's Concerns Regarding the Integrity of CIC's Management.

California law has long held that "the business of insurance is affected with a public interest," and that the state has "an important and vital interest in how insurers operate." (*Carpenter, supra,* 10 Cal.2d at 329.) Accordingly, the Legislature has expressly tasked the Commissioner with evaluating "[t]he competence, experience, and integrity" of insurance companies' management. (Ins. Code §§ 1215.2, subd. (d)(5), 717.) The record reflects the validity of the Commissioner's concerns regarding CIC's management. Substantial evidence shows that CIC's management routinely evaded the Commissioner's regulatory authority both pre- and post-conservation.

The Insurance Code, in the context of a proposed sale such as Menzies' acquisition of CIC's controlling interest from Berkshire Hathaway, expressly tasks the Commissioner with evaluating "[t]he competence, experience, and integrity" of the acquiring company's management. (Ins. Code §§ 1215.2, subd. (d)(5); 717.) As described above by the Ninth Circuit, CIC proceeded to acquire its controlling interest from Berkshire Hathaway before the Commissioner could complete his review of the proposed transaction. In so doing, CIC consciously evaded the Commissioner's regulatory authority and standard regulatory processes. (*Applied Underwriters, Inc., supra,* 37 F. 4th at 585-85 ["Menzies consummated the transaction with Berkshire without the Commissioner's approval, and then attempted to bypass the California insurance regulatory regime altogether by merging CIC I with New Mexico-domesticated California Insurance Company ('CIC II')"].)

The record supports the Commissioner's position that CIC's leadership has repeatedly violated

the Conservation Order. For example, the Conservation Order broadly prohibits CIC from "transacting any of the business of CIC," including the transfer or use of CIC assets, without the "express written authorization of the Conservator" unless that business "is necessary to continue to administer" in-force insurance policies in the ordinary course of business. (Conservation Order, Exh. 1 ¶ 15.) However, in March 2020, CIC made a $20 million uncollateralized loan to Applied for the development of its new corporate headquarters in Omaha. (Opening Br. at 17.) The parties do not dispute that CIC completed this transaction without the Commissioner's involvement or approval. This loan clearly exceeded the scope of the Conservation Order, and making the loan without the Commissioner's knowledge provides a rational basis for the Commissioner's concerns regarding CIC's management.

Moreover, in December 2020, the Commissioner learned that CIC had issued letters on behalf of itself and its affiliates to CIC policyholders, advising them that their CIC policies would be transferred to Continental in violation of the Conservation Order, forcing the Commissioner to direct CIC to withdraw the letters and halt the transfer of policies to Continental. (Holloway Reply Decl. ¶ 6; Dec. 2020 Cease-and-Desist Letter, Reply Compendium, Exh. 90.) CIC does not deny that they failed to obtain the Commissioner's consent as to these actions, and the experience led the Department to doubt CIC's "willingness to deal with the [Commissioner] about such issues in an open manner and in good faith." (Holloway Reply Decl. ¶ 9.) The Court cannot find the Commissioner's concerns about CIC's management to be arbitrary or irrational in light of such evidence.

Additionally, RSM US LLP, the firm retained by CIC and its affiliates as an independent auditor, notified the Commissioner in July 2022 that it had withdrawn as auditor because it had been unable to obtain "timely and accurate information" regarding CIC and the affiliates' financials. (Conservator's Status Report Regarding Additional Management Controls (Sept. 30, 2022) at 2-3.) Following RSM's resignation, CIC sought to retain Armanino LLP, which the Department determined was *not* independent of CIC and its affiliates, to complete the audit. (*Id.* at 4.) Although counsel for Respondents attested before this Court that Armanino had completed its audit of CIC and the affiliates, the Court has not received any audited financial statements in evidence. On this record, the Court considers the Commissioner's concerns about CIC's management arising from the absence of an independent audit rational.

CIC argues that the TPA provision is arbitrary because a conservator should "yield[] the control and direction to the regular officers of the company" where possible. (*Caminetti v. Sup. Ct.* (1941) 16 Cal.2d 838, 843.) The Court finds CIC's reliance on *Caminetti* unpersuasive. While conservation of a financially troubled insurer may aim to avoid insolvency and ensure that the company can be returned to the control of its regular officers, the Insurance Code provides the Commissioner as Conservator with broad discretion to fashion rehabilitation plans, which may preclude reinstating prior management that caused the company's distress. California law does not require a rehabilitation plan to continue to employ delinquent management of a conserved insurer. Rather, courts have denied the requests of pre-conservation management to be reinstated after willingly changing their offending business practices where management has not shown any corresponding change in their state of mind which would preclude further transgressions. (See *Caminetti v. Guaranty Union Life Ins. Co.* (1942) 52 Cal.App.2d 330, 335 ["To follow to its conclusion appellant's argument that there could be no hazard to policyholders so long as the business is solvent would be to sanction the withdrawal of policyholders' money in the payment of excessive salaries without restriction. This is not the law."].) The Court finds that the Commissioner's concerns regarding CIC's management are not arbitrary. The Commissioner has a rational basis for ensuring the independence of the TPA in light of CIC's management's conduct.

2. Substantial Evidence Supports the Commissioner's Concerns Regarding CIC's Ability to Fairly Treat Policyholders

The Commissioner has insisted on a TPA to administer claims because the RPA has created perverse incentives for handling claims under workers' compensation plans. Normally, an insurer tries to reduce the amount paid out on claims, while the injured employee-claimant seeks a higher payment. However, the RPA incentivizes the insurer to increase payouts on claims, at the expense of the policyholders. It is undisputed that under the RPA, unlike in a standard linear retrospective plan, a dollar paid or reserved on a claim may yield more than a dollar of premium to the insurer. In other words, overpaying and over-reserving can benefit CIC and harm poicyholders. The RPA increases the cost of claims and therefore the amount of collateral that CIC requires from the policyholder. CIC then enjoys investment returns on the over-reserved funds. (Muzzarelli Plan Appl. Decl. ¶¶ 21-24, 29; Muzzarelli Reply Decl. ¶ 41; see also *Shasta Linen, supra*, at 38.)

The evidence before the Court reveals that CIC has, in practice, unfairly applied the RPA in a

way to maximize its own benefit at policyholders' expense. Policyholders engaged in RPA litigation with CIC have repeatedly noted that CIC keeps claims "open" to maximize the investment returns which CIC derives on those claims. (Lichtenegger Plan Appl. Decl. ¶¶ 33, 56.) The Department, in reviewing analyses prepared by CIC's actuary, found that "[t]heir analyses, consistent with [the Department's], found the group to be holding more reserves than their expected losses." ((Muzzarelli Reply Decl. ¶ 42.) This showing that CIC has kept claims open past the point of unexpected losses raises the inference that CIC had a policy of over-reserving for profit.

CIC has challenged this evidence, highlighting that "[i]n audits performed by the California Department of Industrial Relations (DIR) in 2013 and 2019, CIC ranked second and fourth in the state, respectively, in workers' compensation claims handling practices." (Opp. at 42, citing Silver Opp. Decl. ¶ 81, Exhs. 89-90, & Donegan Opp. Decl.)[13] Ironically, this assertion validates the Commissioner's concerns. As the Commissioner noted, Respondent's high ratings in DIR audits are entirely consistent with overpayment of claims because those audits are, by law, conducted to detect *underpayments*, not overpayments. (Lab. Code, § 129, subd. (a).) Indeed, the DIR reports do not track claims overpayment, as insurers are assumed to have no reason to overpay claims. (See Opp. Compendium, Exh. 89, at 1 ["Of foremost importance is the payment of all indemnity owed to the injured worker for an industrial injury."], Exh. 90, at 2 [same].) Likewise, although CIC correctly notes that Department examinations of their work did not raise claims handling concerns, the Department's examinations focus on "identify[ing] and remedy[ing] underpayments." (O'Connell Reply Decl. ¶ 9.) Again, it is not surprising that, as the Commissioner asserts, an examination to detect underpayments turned up no concerns regarding overpayment.

CIC has also challenged the Commissioner's reliance on specific allegations of claims mishandling by Lichtenegger to support the TPA. The Court notes that the parties dispute Lichtenegger's conclusions drawn from his clients' claims files, which are not in evidence as they implicate the right to privacy. (Lichtenegger Plan Appl. Decl. ¶¶ 8, 60.) The Court accords deference to the Commissioner in his reliance on Lichtenegger's direct experience with CIC's reimbursement delays. At any rate, evidence that is in the record corroborates Lichtenegger's assertions. For example, although CIC claims that they

[13] Michael Donegan is CIC's claims handling declarant.

paid Savers $200,000 in settlement checks in May 2016 (Donegan Opp. Decl. ¶ 26), contemporaneous communications from a Savers manager show that the claim was not settled as of June 17, 2016. (Michael Strumwasser Reply Decl. ¶ 10, Exh. A ¶ 4.)[14] The manager recounted that an Applied employee still "refused to make a settlement offer on this claim and that [their manager] agreed that the claim was not appropriate for settlement. I recall that I found Applied's position to be unreasonable based on my years of experience overseeing workers' compensation claims, and I remember that the claim took a long time to settle compared to my experience with similar claims." (Strumwasser Reply Decl. Exh. A, ¶ 4.) Other policyholders recounted similar experiences:

> Our experience with CIC is that there was never any urgency by CIC or its affiliates to close claims and no clear desire on their part to reduce claims payments, which we came to conclude was because they could pass high claims costs onto us. As a result, based on how the RPA operated, we began to receive monthly invoices far higher than anything we had ever seen before despite having similar claims experiences to what we had in the past. On two occasions, we received monthly invoices of over one million dollars, and we had never seen anything close to that with previous insurers, nor have we had such an invoice with an insurer since we left CIC. With CIC, sometimes our claims would go down but our monthly invoices continued to go up.

(*Id.* at Exh. B ¶ 5.) This all amounts to substantial evidence to support the Commissioner's concerns about CIC and its affiliates' ability to handle claims in a manner that is fair to both claimants and policyholders. Accordingly, there is a rational basis to include a TPA in the plan in the event that a CIC affiliate is selected as CIC's reinsurer.

D. The Commissioner Has A Rational Basis for Denying Continental Priority in Assuming CIC's Business

CIC proposes that, in lieu of the Commissioner's competitive bidding process for its reinsurer described above, the Commissioner should simply transfer CIC's business to its affiliate Continental, or at the very least, that Continental "should have a right of first refusal if it is willing to match the highest bidder to the Conservator." (Opp. at 46.) CIC maintains that this is necessary because over 85 percent of its business is in California, and selling that "business to a third party would effectively gut the company and is directly contrary to the general purpose of conservation proceedings, and the Conservator's stated goals." (*Id.* at 45.) CIC again claims that a rehabilitation plan is supposed to enable the conserved entity to "resume title and possession of its property and the conduct of its business."

[14] Michael Strumwasser is a California attorney and counsel of record for the Conservator.

(*Caminetti, supra,* 16 Cal. 2d at 843; Ins. Code § 1012.) The Court may vacate the conservation order if, after a full hearing, it appears to the court that the grounds for the conservation order no longer exist, and "that the [conserved entity] can properly resume title and possession of its property and the conduct of its business." (Ins. Code § 1012.) However, the "business" contemplated by the Insurance Code is the operation of an insurance company under a California COA. As CIC has chosen to forfeit their Certificate of Authority, no rehabilitation plan can preserve its ability to insure its California policyholders. Under the proposed Plan, regardless of the reinsurer or the proportion of its business remaining in California, CIC will emerge from conservation with the fair market value of its business reinsured and with its intellectual property (the talent and knowledge of its management and employees). As the Commissioner has emphasized, the Plan is not intended to destroy CIC, but to enable CIC to withdraw from the California insurance market in a manner compliant with the Insurance Code.

The Court concludes that there is a rational basis for the Commissioner's concerns regarding CIC's management and their ability to fairly handle claims. The Commissioner has the authority to require a TPA under the Plan if a CIC affiliate is selected as CIC's reinsurer. Accordingly, the Commissioner's decision to refrain from transferring the policies to Continental, or to give Continental a right of first refusal, is not an abuse of discretion. Plan § 2.2 as written is reasonably related to the public interest.

II. Schedule 2.6: Settlement of RPA Litigation

A. Applicable Law Empowers the Commissioner's Resolution of RPA Litigation Via Schedule 2.6

1. The Commissioner as Conservator May Settle Pending and Subsequent Litigation of a Company Under Conservatorship

As Conservator, the Commissioner possesses the authority to "compound, compromise or in any other manner negotiate settlements of claims" against the conserved business "upon such terms and conditions as the commissioner shall deem to be most advantageous to the estate." (Ins. Code § 1037, subd. (c).) The Insurance Code puts forth a "legislative expression of policy favoring claims by settlement" where "[o]f necessity, if required to satisfy the public interest, the Commissioner possesses considerable discretion in settling claims." (*In re Executive Life, supra,* 32 Cal.App.4th at 374-75, 381.)

This discretion extends to settlement of claims where "the particular settlement materially contributes to an appropriate near global settlement which benefits the estate," so long as the settlement is "reasonably related to the public interest in rehabilitating the insurer" and is not arbitrary or improperly discriminatory. (*Id.* at 376, 381.)

CIC argues that the Commissioner lacks the power to settle pending RPA litigations because they are not yet "liabilities" as defined in the Insurance Code. (See Ins. Code § 1071.5 ["Every insurer which withdraws as an insurer . . . from this state shall, prior to such withdrawal, discharge its liabilities to residents of this State."].) In support of this argument, counsel for CIC presented in oral argument an excerpt from what he identified as "Paper No. 5" of "the statutory accounting principles which govern the definition of assets and liabilities for insurance companies," which purportedly stated that reserves for future losses "are not liabilities because . . . the allegations in a lawsuit don't meet any of the three essentials of the definition of liabilities." (RT Aug. 23, 2023, 10:3-13.) Counsel was apparently referring to the third criterion, listed on his presentation in court, which requires that "the transaction or other event obligating the entity has already happened."

However, counsel for CIC misrepresented the authority proffered to support his position. Counsel for the Commissioner quoted the remainder of the Paper, which provides that such liabilities include "but [are] not limited to, liabilities arising from policyholder obligations (e.g., policyholder benefits, reported claims, and reserves for incurred but not reported claims." (*Id.,* 116:18-117:19.) This refutes CIC's argument by clarifying that reported claims and reserves for claims that have not yet been reported are conventionally treated as liabilities.[15] As CIC is withdrawing from the California insurance market, the Insurance Code requires CIC to settle outstanding liabilities, such as pending litigation, before exiting the state. (See Ins. Code 1071.5 ["Every insurer which withdraws as an insurer . . . from ths State shall, prior to such withdrawal, discharge its liabilities to residents of this State."].)

[15] "Paper No. 5" was no introduced into evidence or referenced in the parties' briefing. However, since CIC's counsel identified the document as reflecting state law, and since the Commissioner's counsel confirmed the authenticity of the full passage, the Court will take judicial notice of the passage in its entirety, as represented in the Commissioner's counsel's presentation, under Evidence Code section 452, subdivisions (b) and (h).

2. CIC's Arguments Against The Commissioner's Authority Are Unpersuasive

CIC's contention that Section 2.6 is barred by the June 2, 2017 Shasta Settlement between CDI, CIC, and AUCRA settling the *Shasta Linen* administrative action disregards the Commissioner's express reservation of rights:

> 5. Reservation. Nothing in this Agreement limits the power of the Commissioner to initiate any legal administrative proceeding, to take any action permitted by law and to seek and obtain all relief and remedies available (including any fine or penalties) or to adjudicate the right of others, as otherwise permitted by law.

(*Shasta Linen* Settlement Agreement at 2.)

As the Commissioner correctly argues, CIC cannot plausibly maintain that the Commissioner is in breach of a contract by taking action that is expressly reserved to him by the contract. Moreover, the First District has spoken on the good faith dispute recited in the *Shasta Linen* settlement "that [it] is ultimately for the courts to decide . . . as to the remedy authorized by the California Insurance Code and whether the RPA is void as matter of law under the California Legislature's comprehensive regulatory scheme and relevant case law." (*Luxor Cabs, supra*, 30 Cal.App.5th at 970, 984 – 987.)

CIC also argues that Schedule 2.6 is irrational because CIC's conservation is not predicated on its insolvency. This position is unfounded. The Insurance Code does not require a company's insolvency to contemplate the set aside of funds described under Schedule 2.6. (See Ins. Code §§ 1037, 1043 [outlining non-insolvency related bases for conserving a company].)

CIC's argument that Schedule 2.6 serves no rational basis because the *Shasta Linen* Settlement approved a "functionally identical" RPA for sale to California employers misstates the evidence on the record. The Settlement mandated that CIC and affiliates revise the RPA's marketing materials to contained "improved disclosures in the materials provided by CIC/AUCRA to potential clients to lessen this chance for misunderstanding." (Muzzarelli Decl. ¶ 25.) Further revisions to the RPA negotiated between the parties in 2017 required changes in the agreement's calculation methods. (*Id.* at ¶ 28.) Significantly, these revisions also required CIC to value policyholders' accounts annually, limiting CIC's ability to hold onto initial

payments and reap the investment income from those funds. (Groden 2021 Decl. at 11-12, fn. 4.)[16]

CIC offers no legal authority for its argument that the Commissioner is usurping the authority of California's courts. Thus, it is deemed to be without foundation and requires no discussion. (See *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns* (1992) 7 Cal.App.4th 27, 35, superseded by statute on other grounds in *Union Bank v. Sup. Ct.* (1995) 31 Cal.App.4th 573, 583.) The Court will, however, note that the Ninth Circuit confirmed the centrality of this Court, holding that CIC's affiliates must yield to this Court's prior exclusive jurisdiction even in civil rights suits brought under federal law. in *Applied Underwriters v. Lara*, which held that even federal civil rights lawsuits by Respondent's affiliates must yield to this Court's prior exclusive jurisdiction. (*Applied Underwriters v. Lara, supra,* 37 F.4th at 587, 592-593.)

B. There Is a Rational Basis For Schedule 2.6 in Its Entirety

Schedule 2.6 draws on restitution principles to enable select policyholders to compromise their claims against CIC. The Commissioner believes this is a fair and equitable process that reflects the rights of the respective parties and that a substantial majority of eligible policyholders will choose an option. (Holloway Plan App. Dec., ¶ 27)

The options will be available to three groups of policyholders: (1) those engaged in RPA litigation at the time of the Conservation Order; (2) those against whom CIC believes it has claims for payments and whom CIC will identify in a Schedule of Subsequent Litigation, with CIC permanently barred from suing any not listed; and (3) the 10 policyholders who are not currently parties to litigation, but received notice of the opportunity and have submitted their claims to the Conservator within the time provided, which has since closed. (Sched. 2.6, art. I, ¶¶ 5, 19, 23, 24, 32, art. VII.) Policyholders in all three groups will be given the opportunity to resolve the dispute through the three options of Schedule 2.6.

Schedule 2.6 offers three options, all of which are based on individualized calculations of a "restitution amount," i.e., the amount the policyholder paid CIC minus the amounts it owes under that

[16] Ronald A. Groden is a non-party to this litigation.

option. The restitution amount may be positive or negative. If it is positive, the policyholder paid CIC more than it owes under the option, so CIC must pay that amount, with interest, if that option is chosen. If it is negative, the policyholder paid less than it owes under that option, so the policyholder must pay that amount to CIC, with interest. (Muzzarelli Plan Appl. Decl. ¶¶ 31-33.)

The *Option 1 Restitution Amount* is straightforward: It is simply the amount paid to CIC and its affiliates minus the amount owed under the CIC guaranteed-cost policy. (*Id.* at ¶¶ 31, 33, 39.)

The *Option 2 Restitution Amount* is more complex because Option 2 is based on the cost of a commercially available retrospective policy. Under such policies, the premium is determined by the ultimate losses under the policy, which include both paid losses and amounts set aside in reserves on open claims and on claims not yet reported. Schedule 2.6 prescribes how the losses are calculated from CIC's data. However, because the propriety and accuracy of claims payments and reserves, which come from CIC's books, may be disputed, those quantities are subject to review if challenged by a policyholder. Schedule 2.6 uses the California Retrospective Rating Plan ("Cal Retro") filed by the Workers' Compensation Insurance Rating Bureau as the commercially available retrospective policy whose pricing is the standard under Option 2. The Option 2 Restitution Amount is the amount the policyholder paid minus the premium that would have been charged under the Cal Retro plan. (*Id.* at ¶¶ 31, 40-44, 47-53.)

The *Option 3 Restitution Amount* is the amount paid to CIC minus the amount due under the RPA. Because the RPA is a retrospective policy, the amount due is determined by the losses under the policy. Because some policyholders dispute those losses, they may be challenged and reviewed. (*Id.* at ¶¶ 31, 45-46, 47-53.)

Schedule 2.6 outlines its process. First, the Commissioner appoints an Independent Consultant, who will translate the formulas in Schedule 2.6 into a template to circulate for comments. The Independent Consultant will then finalize the formula template after receiving and considering comments. (Sched. 2.6, art. VI.) CIC then submits to the Independent Consultant a data file, conforming to the template, for each eligible policyholder ("Claimant"), from which the Independent Consultant calculates the Option 2 Restitution Amount and Option 3 Restitution Amount.[17] The Independent

[17] The Option 1 Restitution Amount does not depend on the formula template data.

Consultant then sends the Commissioner a written Settlement Offer with the three Settlement Amounts, which the Commissioner tenders to the Claimant, who then has 30 days to select an offer or decline all of them. (*Id.* at ¶ VI(6).) Alternatively, the Claimant may request review of the paid losses or reserves by the Independent Consultant (*id.* at art. VII), which extends the time to respond to the Settlement Offer. (*Id.* at ¶ VI(6).) If the review results in a change in the losses, the Independent Consultant recalculates the Settlement Offer, from which the Claimant makes its election. (*Id.* at ¶ VII(4).) Each of the policyholder-specific data elements employed in the calculations—premiums, losses, coverage periods, payment dates, and so on—come from CIC's data. (*Id.* at ¶ VI(2), (3).)

There is a rational basis for Schedule 2.6 in its entirety. The RPA litigation is related to the grounds for CIC's conservation, and substantial evidence supports the Commissioner's belief that CIC faces significant liability in RPA litigation. CIC has otherwise failed to show that Schedule 2.6 is arbitrary or improperly discriminatory.

1. The RPA Litigation Is Related to the Grounds for CIC's Conservation

The parties agree that CIC's conservation arises from its attempted merger with CIC II as outlined above. They do not agree as to whether CIC's involvement in RPA litigation incentivized that merger. CIC argues that the inclusion of Schedule 2.6 renders the Rehabilitation Plan arbitrary and lacking in a rational basis because the Commissioner did not identify that litigation as grounds for the conservation in his Ex Parte Application to this Court. The Commissioner disputes that the original grounds for the conservation limit the provisions of a subsequent rehabilitation plan and still argues that Schedule 2.6 meets even CIC's reading of the law.

CIC argues that the Commissioner's discretion to address CIC's affairs is confined to the "purposes of the conservatorship proceeding." (*Caminetti, supra,* 16 Cal.2d at 843.) But that does not necessarily mean that a rehabilitation plan is limited to the purposes known and pled on the day a conservation order is sought. The Court may only terminate a conservation after finding, following a full hearing, that "the ground for the order directing the commissioner to take title and possession does not exist or has been removed and that the person can properly resume title and possession of its property and the conduct of its business." (Ins. Code § 1012.) As such, the Court assesses the pre-conservation management's ability to take back the company at the time the company would be *released* from the

conservation, not at the time of the order *imposing* the conservation. The RPA litigation clearly constitutes conduct which the Court must consider prior to terminating CIC's conservation as contemplated by the Insurance Code.

Even under CIC's logic, the RPA litigation provided grounds for the conservatorship. The Conservation Application referred to CIC's use of "unfiled contract amendments" as an "illegal scheme," part of CIC's "pattern of flouting California regulatory processes designed to protect California policyholders." (Conservation Appl. ¶ 17.) These facts form the basis of policyholders' claims against CIC in RPA litigation. And, as discussed above, CIC's merger with CIC II will not comply with California law if CIC is able to complete the merger and exist the California insurance market without settling outstanding liabilities.

The Court finds that settlement of RPA litigation is related to the grounds for CIC's conservation. The Commissioner's decision to settle RPA cases in the conservation is not arbitrary, not lacking in a rational basis, and not contrary to law.

2. Substantial Evidence Supports the Commissioner's Belief that CIC Faces Significant Liability in RPA Litigation

The Commissioner determined that CIC faces significant legal exposure in ongoing and pending RPA litigation because, in the Department's analysis, the RPA is unlawful and void. (*Shasta Linen, supra,* at 67-68; Code Civ. Proc. §§ 1598, 1608.) While the Court declines to adopt the Commissioner's legal conclusion, substantial evidence supports the Commissioner's belief that the RPA and related conduct form the basis for numerous different legal theories of recovery that could jeopardize CIC's conserved estate.

Substantial evidence supports CIC's liability under contract law principles. (See *Jackpot Harvesting, supra,* 33 Cal.App.5th at 735 ["Generally a contract made in violation of a regulatory statute is void."].) Even if the RPA is unenforceable as a matter of law, California courts have enforced illegal contracts to avoid unjust enrichment to the defendant drafter. (See, e.g., *Tri-Q, Inc. v. Sta-Hi Corp.* (1965) 63 Cal.2d 199, 219 [enforcement required to "prevent the guilty party from reaping the benefit of his wrongful conduct, or to protect the public from the future consequences of an illegal contract"]; *Kyablue v. Watkins* (2012) 210 Cal.App.4th 1288, 1293 [enforcement of illegal contract

would prevent a "disproportionately harsh penalty upon the plaintiff."].) Likewise, substantial evidence supports CIC's violation of the implied covenant of good faith and fair dealing, whose breach in the context of an insurance contract dispute may support punitive damages in a parallel tort action. (See *Gomez v. Volkswagen of America, Inc.* (1985) 169 Cal.App.3d 921, 927 ["'[W]e have emphasized the 'special relationship' between insurer and insured, characterized by elements of public interest, adhesion, and fiduciary responsibility.'"] [quoting *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 820].) The record before the Court is replete with instances where CIC and its affiliates have delayed settling open claims to stall distributing funds to policyholders. (Lichtenegger Plan Appl. Decl. ¶¶ 56-58; Strumwasser Reply Decl., Exh. A ¶ 4 & Exh. B ¶ 5; *Randazzo* Decision, Larsen Decl. Exh. 44 at 13; *Shasta Linen, supra,* at 38 [Applied's inaction following policyholder's report of potential fraud cost policyholder over $100,000].) Such conduct by a workers' compensation insurer in administering a retrospective program is a recognized breach of the covenant of good faith and fair dealing. (See, e.g., *California Lettuce Growers v. Union Sugar Co.* (1955) 45 Cal.2d 474, 484 ["where a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing"]; *Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504 [over-reserving may give rise to tort action for breach of covenant of good faith, exposing workers' compensation insurer to punitive damages].)

There is a rational basis for the Conservator's conclusion that CIC also faces liability under all three grounds for relief in California's Unfair Competition Law (UCL, Bus. & Prof. Code, § 17200 *et seq.*) Under the UCL, insurers may be liable to private plaintiffs for conduct that violates laws other than the Unfair Insurance Practices Act (UIPA, § 790 *et seq.*; *Zhang v. Sup. Ct.* (2013) 57 Cal.4th 364, 368.) As outlined in *Shasta Linen,* CIC's failure to file and secure approval of the RPA in violation of the Insurance Code may expose CIC to liability under the UCL's illegality prong. (See *Shasta Linen, supra,* at 62, 64; Ins. Code §§ 11658, 11735; Cal. Code Regs., tit. 10, §§ 2218, 2268 [requiring filing of forms and rates and prohibiting use of forms and rates that have not been filed and approved by the Commissioner].) Subsequent appellate proceedings have found CIC's conduct unlawful on similar grounds. (See, e.g., *Jackpot Harvesting, supra*, 33 Cal.App.5th at 736 ["We conclude that the Request to Bind is such a collateral agreement, triggering section 11658 and Regulations section 2268's

regulatory approval requirement."]; *Luxor Cabs, supra*, 30 Cal.App.5th at 986; *Nielsen, supra,* 22 Cal.App.5th at 1118; accord *Minnieland Private Day School, Inc. v. Applied Underwriters Captive Risk Assurance Company, Inc.*, 913 F.3d 409, 423 [holding that the RPA is an insurance contract subject to regulatory approval under Virginia's insurance laws].) Substantial evidence supports CIC's potential liability as to the RPA as an unlawful business practice within the meaning of the UCL.

There is a rational basis for the Commissioner's contention that policyholders can hold CIC liable for the RPA as an "unfair" business practice under the UCL. (See, e.g., *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839 ["[a]n act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided"]; *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719 [an unfair policy "offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers"; *Scripps Clinic v. Sup. Ct.* (2003) 108 Cal.App.4th 917, 940 [an unfair practice violates a "public policy which is . . . 'tethered' to specific constitutional, statutory, or regulatory provisions."] [internal citations omitted].)

Substantial evidence supports the Commissioner's conclusion as to CIC's risk for liability under the UCL's unfairness prong. CIC's use of unfiled, unapproved forms and rates contravenes the Insurance Code's filing and public inspection requirement crafted to ensure that employers find coverage at competitive rates thanks to broad access to filed rate information. (Ins. Code §§ 11735, subd. (b); 11742, subd. (a).) The transparency-enforcing mechanisms also help protect the state's workforce by ensuring benefits are available to employees who are injured or sickened over the course of employment. (*Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055, 1065.) Other aspects of the RPA support the Commissioner's conclusion that the RPA may be an unfair business practice. As previously noted, policyholders did not receive the RPA until after they were bound into the EquityComp program, only then realizing that they would have to wait an additional three years following expiration of the RPA to receive a refund of their excess premium and fees. (*Shasta Linen, supra,* at 34.) Moreover, the RPA obligated employers to continue depositing collateral until the RPA was terminated on a date to be determined by AUCRA at its "sole discretion." (*Id.* at 31-32; Lichtenegger Plan Appl. Decl. ¶ 16.) CIC

and affiliates relied on this provision to delay policyholder returns for years, during which time it could invest those funds and collect the investment income. (*Shasta Linen*, supra, at 31, 35; Lichtenegger Plan App. Dec., ¶¶ 17-19, 34, 37, 52, 56-58 [detailing cases in which clients had to wait to receive return of excess funds].) A policyholder anxious to recover its excess funds was, in effect, left with no recourse aside from litigation, unless it was willing to settle with CIC for amounts far below what it was owed under the RPA. (Lichtenegger Plan Appl. Decl. at ¶¶ 52, 54.)

The Commissioner also determined that CIC faces liability under the UCL's bar on fraudulent practices. (See *Zhang, supra,* 57 Cal.4th at 380 ["Under the UCL, it is necessary only to show that the plaintiff was likely to be deceived, and suffered economic injury as a result of the deception."] [citing *Kwikset Corp. v. Sup. Ct.* (2011) 51 Cal.4th 310, 322].) In *Shasta Linen*, the Commissioner found that the EquityComp marketing materials prepared by AUI misrepresented the amounts a prospective policyholder could expect to pay, and other arbitration decisions are in accord. (*Shasta Linen, supra*, at 27; *Randazzo* Decision, Reply Compendium, Exh. 44 at 11-12.) The Commissioner has concluded that these practices, among others, give rise to substantial claims under the "fraudulent practices" prong of the UCL.

CIC argues that Schedule 2.6 is unnecessary because courts can assess CIC's liability under any of the theories at hand, and "[t]here is no evidence anywhere in the record, let alone substantial evidence, that CIC faces or ever faced material financial liability in connection with the RPA litigation such that resolution of the RPA litigation through the Plan is necessary for preservation of the conserved estate." (Opp. at 21:23 – 22:2.) CIC has not provided any legal authority to support its argument that a "material financial liability" standard should be applied here, so the Court need not consider its argument. (See *Do It Urself, supra,* 7 Cal.App.4th at 35 "[a] point which is merely suggested by [a party's] counsel, with no supporting argument or authority, it deemed to be without foundation and requires no discussion."] [internal citations omitted].) CIC's argument that Schedule 2.6 represents a global settlement which precludes CIC from asserting appropriate defenses to outstanding RPA litigation is likewise unavailing. CIC has not raised any across-the-board defenses which it has, or could have, raised. Such an argument therefore appears to be another tactic through which CIC seeks to disregard its obligation under the Insurance Code to discharge its liabilities to California residents prior to

withdrawing from the California insurance market at the conclusion of this conservatorship. (See Ins. Code § 1071.5 [noting that this obligation applies to every withdrawing insurer].)

Given the breadth of the UCL and the evidence of acts and omissions by CIC and its affiliates that create liability under the UCL violations and breaches of contract, the Commissioner has sought to settle RPA cases. (Plan Appl. at 32.) The Court does not conclude that the Commissioner's determinations are arbitrary, lack a rational basis, are contrary to law, or constitute an abuse of discretion.

3. Substantial Evidence Shows that CIC Has Made Litigation Onerous for Policyholders

As discussed with respect to Plan § 2.2, the Commissioner as conservator possesses the power to rehabilitate CIC's relationship with its policyholders. Substantial evidence on the record supports the Commissioner's assertion that CIC has engaged in improper conduct towards its policyholders in RPA litigation in several ways.

There is a rational basis for the Commissioner's conclusion that CIC and affiliates have forced policyholders to litigate in a number of different forums based on the structure of the RPA's arbitration provisions. The RPA subjects all disputes to binding arbitration in the British Virgin Islands, under Nebraska law, and requires that all arbitration awards must be enforced in Nebraska courts. (*Shasta Linen, supra*, at 32, 56.) The Commissioner in *Shasta Linen* described this modification as "extremely disconcerting since the Insurance Code prohibits the use of arbitration provisions without written notice to the policyholder that such a provision is negotiable." (*Id.* at 56.) There is evidence that the arbitration provisions have created obstacles to resolving policyholder disputes in at least two ways. First, adjudicators have found the arbitration provision unenforceable under Nebraska law, as Nebraska Revised Statue 25 – 2602.01 forbids arbitration of "any agreement concerning or relating to an insurance policy." (Final Award in *Applied Underwriters Captive Risk Assurance Company, Inc. v. O'Connell Landscape Maintenance, Inc.*, ICDR Case No. 01-16-0005-0136, dated August 27, 2018, Reply Compendium, Exh. 85 at 2.) Still, CIC and affiliates sought arbitration of disputes even when the arbitrators themselves have found that they "do not have jurisdiction to hear the merits of this dispute" under governing law. (*Ibid.*) Second, even if a policyholder elected to arbitrate its disputes, some

arbitrators nevertheless decided that only the Commissioner had the authority to declare the RPA void. (See Final Award in *O'Connell Landscape Maintenance, Inc. v. Applied Underwriters Captive Risk Assurance Company, Inc., et al.*, JAMS Case No. 1100084561, dated December 4, 2017, Reply Compendium, Exh. 83 at 7 [determining that only the Commissioner can claim that the RPA is unenforceable].) By requiring policyholders to resolve their disputes before an arbitrator, only to have the arbitration clause be found unenforceable or for the arbitrator to conclude that they cannot decide the dispute, CIC and affiliates have trapped policyholders in circular litigation at great cost.

Substantial evidence also supports the Commissioner's contention that CIC and affiliates have required policyholders to individually litigate the legality of the RPA. (Lichtenegger Plan Appl. Decl. ¶ 27 ["In each and every case on behalf of my client policyholders, AUI, AUCRA and CIC have insisted on relitigating the illegality of the EquityComp program both before the courts as well in appeals to the CDI."].) CIC maintains that whether the RPA is void is still an open question (see Opp at 19–21). While the Court declines to adopt the Commissioner's position as to the illegality of the RPA, the Court notes that in the years of litigation that ensued following the 2017 *Shasta Linen* Settlement Agreement, not one California court of appeal or superior court that has considered the RPA has issued any ruling conflicting with the Commissioner's decision in *Shasta Linen* that the RPA was void and unenforceable as a matter of law. (Larsen Reply Decl. ¶ ¶ 9, 13.)

Moreover, Nebraska courts have dismissed countersuits by CIC's affiliates for over fifteen years for lack of jurisdiction over non-Nebraska policyholders. (See, e.g., Order on Defendants' Motion to Dismiss in *Applied Underwriters Captive Risk Assurance Company, Inc. v. RDR Builders, LP, et al.*, Dist. Ct. Douglas County, NE, Case No. CI 17-5424, dated March 13, 2018 *("RDR* Order"), Reply Compendium, Exh. 59 at 11; *Applied Underwriters, Inc. v. Dinyari, Inc.* (Neb. Ct. App., May 20, 2008, No. A-07-058) 2008 WL 2231114, at *7 ["Based on our de novo review, we conclude that [California policyholder] Dinyari did not have sufficient minimum contacts with Nebraska to satisfy the due process requirements for the exercise of personal jurisdiction."] ; *Applied Underwriters, Inc. v. Emp'r Outsource Serv., Inc.*, 2007 WL 1470454, at *5 (Neb. Ct. App. May 22, 2007) [Illinois policyholder who executed payment plan promissory note with AUI did not establish minimum contacts with Nebraska sufficient to establish personal jurisdiction in Nebraska].) CIC does not dispute that its affiliates regularly sued its

California policyholders in Nebraska despite repeated findings of lack of personal jurisdiction. (Lichtenegger Plan Appl. Decl. ¶ 50; Larsen Reply Decl. ¶¶ 23–27, 37–38; *Applied Underwriters Captive Risk Assurance Co., Inc. v. E.M. Pizza, Inc.* (Neb. Ct. App. 2019) 923 N.W.2d 789 (*E.M. Pizza*.)) Troublingly, AUI appealed every instance where the trial court granted a motion to dismiss, and all appeals were unsuccessful. (Larsen Reply Decl. ¶ 25; Reply Compendium, Exhs. 56-73.) One policyholder, O'Connell Landscaping, was sued at least four times in Nebraska (not including an arbitration action), and each case was dismissed. (Larsen Reply Decl. ¶ 25, 34–38.) The Court need not conclude that these Nebraska suits were filed to retaliate against policyholders, but the Court finds the Commissioner's decision to consider this pattern rational.

Commissioner's counsel characterizes this tactic as a "common practice of CIC and its affiliates that serves to increase the costs of litigation." (Larsen Reply Decl. ¶ 17.) There is substantial evidentiary support for this assertion. Indeed, CIC does not dispute that it has regularly initiated litigation against California policyholders in Nebraska, nor does it dispute that these actions come at a "tremendous cost[] to the policyholders." (Lichtenegger Plan Appl. Decl. ¶ 43.) Neither does CIC dispute that its lengthy appeals have prolonged the time that it can enjoy the investment income on policyholders' money. (*Ibid.*) The record contains evidence that CIC has incentives to prolong litigation through the appellate process to continue accruing investment income. For example, in the *Barker Management* and *Bayless Engineering* cases, policyholders who agreed to arbitrate their disputes—and who won "substantial" awards from their respective arbitrators—saw years-long delays in receiving payment. *(Id.* at ¶ 38.*)* Still, today, Bayless has yet to receive its award. (*Id.* at ¶ 39; Larsen Reply Decl. ¶ 22, 33; Stephens Opp. Decl. ¶ 64.) Additionally, after the Ninth Circuit affirmed the federal district court's confirmation of an arbitration award against AUCRA for $550,093 plus interest, AUCRA failed to pay the award, walking back its promise to post bond as stipulated. (Lichtenegger Plan Appl. Decl. ¶ 38; Larsen Reply Decl. ¶ 30; Barzelay Opp. Decl. ¶ 7. Seven weeks later, when CIC entered conservation, CIC's counsel claimed that AUCRA could not pay the award because CIC was in conservation. (Larsen Reply Decl. ¶ 30; Stephens Opp. Decl. ¶ 64.)

CIC has objected to the Commissioner's reliance on the Lichtenegger Declaration. The Court notes that Lichtenegger's sworn allegations are consistent with other evidence before this Court,

including the Commissioner's own conclusions in *Shasta Linen*, the arbitrator's findings in the *Randazzo* decision, and sworn statements of the Department's senior casualty actuary. Although CIC has sought to impeach Lichtenegger, this impeachment evidence does not demonstrate that the Commissioner abused his discretion or otherwise acted arbitrarily by relying on Lichtenegger's representations of his own experience. Nor does the Court conclude that it was an abuse of discretion, irrational, or arbitrary for the Commissioner to consider this aforementioned evidence as indicative of potentially larger and more endemic issues that demand rehabilitation. A certain amount of disagreement between insurers and their policyholders is not uncommon, nor is it particularly out of the ordinary to have those disagreements spill into litigation. But the repetitive and prolonged nature of the RPA litigation is atypical. CIC does not contend that this litigation is in any way ordinary. The Commissioner had a rational basis to conclude that CIC's sale of the RPA led to disputes outside the ordinary course of business between insurance companies and policyholders.

The Comissioner additionally has a rational basis for his conclusion that allowing the resolution of these disputes to continue in the manner that they had been occurring would not be fair and appropriate to all parties involved. Substantial evidence shows that CIC made resolving disputes excessively onerous on policyholders in a way that deterred them from actually enforcing their legal rights. It is consistent with the Commisioner's duty to protect the interests of CIC's estate, its policyholders, other beneficiaries, and the public by proposing a mechanism for settling this litigation.

4. CIC Has Otherwise Failed to Show that Schedule 2.6 Is Arbitrary

CIC has offered several arguments against Schedule 2.6. The Court finds each argument unpersuasive. Schedule 2.6 is not arbitrary, nor is it irrational, as CIC claims.

CIC's argument that it has had substantial litigation success is unpersuasive. The Commissioner's argument in reply that analyzes the litigation successes is more persuasive and grounded in rational basis:

> The rosy picture Respondent portrays of its "substantial litigation successes" (Opp. at 16) is incomplete and misleading. As the Declaration of Cynthia Larsen (Larsen Decl.) thoroughly documents, Respondent's "victories"—primarily, defeating class certification and an unpublished federal decision whose reasoning has been rejected by California state courts—are the exception, not the rule [where: (1)] Almost Two Dozen California Superior Courts Have Handed Substantive Litigation Defeats to Respondent;

> [(2)] Unpublished Federal Court Orders Are Not Instructive and Only Confirm the Benefits of Schedule 2.6; [(3)] Respondent's Losses in Arbitral Forums Far Exceed Their "Victories"; [and (3)] California Appellate Precedents Make Clear the RPA Is Unlawful and Void[.]

(Reply at 14:15 – 19:4.)

First, CIC's citations to cases where it defeated **class certification** are irrelevant here. (Opp. at 17:8 – 18:20; see, e.g., *Pet Food Express, Ltd. v. Applied Underwriters, Inc.* (E.D. Cal., Sept. 12, 2019, No. 2:16-CV-01211 WBS AC) 2019 WL 4318584, at *2 ["denied the motion to certify on superiority grounds"], *Shasta Linen Supply, Inc. v. Applied Underwriters, Inc.* (E.D. Cal., Jan. 29, 2019, No. 2:16-CV-1211 WBS AC) 2019 WL 358517, at *6 - *7 ["the court will deny plaintiffs' motion for class certification" because manageability and superiority "weigh against class certification"], *Shasta Linen Supply, Inc. v. Applied Underwriters, Inc.* (E.D. Cal., Apr. 17, 2019, No. 2:16-CV-1211 WBS AC) 2019 WL 3244487, at *2 [denied granting leave to file a renewed motion for class certification where same issues of manageability and superiority were present "in the context of this newly proposed class"].)

Second, CIC's citation to it prevailing on summary judgment of the UCL claim in *Pet Food Express* (Opp. at 18:5-12) is not well taken since on demurrer, a Sacramento Superior Court judge found,

> Review of *Pet Food Express* has not persuaded this Court to change its tentative demurrer ruling. There are several reasons for this decision.
>
> First, the *Pet Food Express* decision is an unpublished district court decision and not binding precedent that this Court must follow.
>
> Second, *Pet Food Express* addressed related legal issues but not the precise legal issues set forth in the demurrer, and it addressed these issues in a different procedural posture from the demurrer in this case. Plaintiffs in this case demur to the First Cause of Action of the FACC on the ground that the RPA is void and unenforceable as a violation of Insurance Code section 11658. *Pet Food Express* addressed the lack of evidence of economic loss to plaintiffs - not an issue raised by this demurrer, which must weigh allegations rather than consider evidence. *Pet Food Express* also addressed a factual issue, the marketing of a version of the RPA that was approved by the Insurance Commissioner, that is not raised by the allegations contained in the First Cause of Action of the FACC.
>
> Third, this Court does not find the manner in which the district court distinguished *Luxor* and *Nielsen* - essentially confining its interpretation of their holdings to their precise facts - to be persuasive. Those cases, which by contrast to *Pet Food Express* squared addressed section 11658, are binding on this Court.

(Conserv. Reply Evid., Exh. 29 at 7. See also Reply at 15:22 – 16:5.)

Third, CIC's citation to "a favorable judgment in one of the only RPA litigations tried to a

California Superior Court" (Opp. at 18:19 – 19:2.) is not well taken. As the Commissioner points out, CIC's citation to a Statement of *Intended* Decision in *Roadrunner Management Services, Inc. v. Applied Underwriters, Inc.* (Ventura Sup. Ct. case no. 692017-0049339 -CU-CO-VTA) ("*Roadrunner*") is not final. (CIC Evid., Exh. 31.) Notably, CIC admits that this "has not been converted to a final judgment due to the timing of this conservation and the resulting injunction and stay of litigations." (Opp. at 19:28, fn. 6.) As "[a] tentative ruling is, by definition, not final," the Court declines to accord weight to this proffered authority. (*People v. Hatt* (2018) 20 Cal.App.5th 321, 324; Reply at 17:26-28, fn. 11) Further, as the Commissioner argues, "*Pet Food* does demonstrate one salient point: the perils of piecemeal litigation and its inevitable multiplicity of inconsistent results." (Reply at 15:6-7.)

The Court likewise finds CIC's assertion of the litigation privilege and constitutional objections unpersuasive. A conservation is a "special proceeding" (*Applied Underwriters, supra,* 37 F.4th at 589) that vests the Commissioner with "discretion to settle disputes concerning relative priorities of claimants in appropriate circumstances." (*Executive Life, supra,* 32 Cal.App.4th at 370). The Commissioner has not has exceeded his power to settle claims against a conserved company as Conservator in a way that violates CIC's constitutional rights or the litigation privilege. The Court likewise finds CIC's assertion that Schedule 2.6 unfairly discriminates against its interests by favoring policyholders without merit.

CIC has objected to Schedule 2.6 as applied to its affiliates, claiming that the Insurance Code only empowers the Commissioner to settle cases pending against the "person" in conservation. (See Ins. Code § 1037.) The Commissioner has explained that resolving RPA litigation via Schedule 2.6 necessarily involves CIC's affiliates because they are inextricably intertwined in the RPA scheme and the subsequent enforcement against policyholders, including as to promissory notes extended by AUI. (Plan Appl. at 8, 11, 25-26.) Accordingly, the Plan treats these entities as a joint enterprise with shared identities of interest for purposes of settling suits and claims related to the RPA.[18]

[18] The Commissioner states that entities considered a joint enterprise are also jointly and severally liable. (See *Gopal v. Kaiser Foundation Health Plan, Inc.* (2016) 248 Cal.App.4th 425, 431 ["Under California law, if [several business] entities are a single enterprise, they are each liable for all of the acts and omissions of the other components of the enterprise"]; *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1108 ["'single-business-enterprise' theory is an equitable doctrine applied to reflect partnership-type liability principles when corporations integrate their resources and operations to achieve a common business purpose"].)

The Commissioner's inclusion of CIC's affiliates in this part of the Plan falls squarely within his authority as Conservator and this Court's jurisdiction, both of which reach non-conserved entities that share an identity of interest with the conserved estate. (*Garamendi v. Executive Life Ins. Co.* (1993) 17 Cal.App.4th 504, 523.) The Court notes that CIC and its affiliated entities have regularly been treated as a single enterprise by the Commissioner, trial courts, arbitrators, and California and federal courts of appeal. (See *Shasta Linen, supra*, at 49-50 [CIC, AUCRA, and AUI are "inextricably intertwined" and "enmeshed"]; *Nielsen, supra*, 22 Cal.App.5th at 1113-16 [record on appeal supported conclusion that affiliated entities should be considered together because they were so enmeshed and intertwined]; *Luxor Cabss, supra*, 30 Cal.App.5th at 985-86 [same]; *Applied Underwriters, supra*, 37 F.4th at 592.) CIC claims that these findings are "inapposite" because they did not apply an "alter ego" test and did not recite facts that to support piercing the corporate veil. (Opp. at 40.) However, the alter ego doctrine, which "arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests" (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212), simply has no bearing on whether this Court exercises *in rem* jurisdiction over the assets of third parties that have an "identity of interests" with the conserved entity, CIC. (*Garamendi*, 17 Cal.App.4th at 516). Indeed, as the Ninth Circuit noted when finding that federal suits by AUI and CIC II were barred by this Court's prior *in rem* jurisdiction over assets of those CIC affiliates, "*Garamendi v. Executive Life* [citation] further supports the *in rem* classification here." (*Applied Underwriters*, 37 F.4th at 592.)

The Court notes that Schedule 2.6 does not require the affiliates to do anything or pay any amount. If Schedule 2.6's formulas require payment to a policyholder, *CIC* would make that payment, *not* the affiliates. (Sched. 2.6 ¶ VI.7.) Likewise, if Schedule 2.6 results in payment by the policyholder, the policyholder pays CIC, after which an eligible affiliate can seek indemnity from CIC. And again, nothing in the Plan affects the ability of CIC's affiliates to pursue relief against CIC or CIC II once the Plan is implemented.

CIC's objections to specific components of Schedule 2.6 are unpersuasive. CIC mischaracterizes Schedule 2.6 Option 2 as "rewrit[ing]" the RPA based upon an imaginary proxy company. (Opp. at 8, 29.) The Commissioner has a rational basis to rely on an open-market measure for quantum meruit

restitution under Option 2, as CIC's own measures of loss-sensitive policies were roughly 33 percent above market average. (See Reply Compendium, Exh. 92, 238:20-25.) Moreover, as the Commissioner points out, "a determination of fair market value is necessarily hypothetical." (*Long Beach Memorial Medical Center v. Kaiser Foundation Health Plan, Inc.* (2021) 71 Cal.App.5th 323, 346.) The Commissioner therefore had a rational basis to conclude that, what matters for purposes of determining the reasonable market value of a loss-sensitive policy is "the price that a *hypothetical* willing buyer would pay a *hypothetical* willing seller for the services." (See *id.* at pp. 345-346 [trial court did not err in jury instruction for quantum meruit claim defining "reasonable value" of services provided as "the price that a *hypothetical* willing buyer would pay a *hypothetical* willing seller for the services," italics added].)

Finally, with respect to New York's request that the remedies of Schedule 2.6 be made available to its policyholders engaged in litigation over the RPA, given the Commissioner's oversight, the Court will not entertain that request at this time. If the Commissioner wishes to propose New York's inclusion, he may make a subsequent application for amendment of the plan, including citation of authority showing that Schedule 2.6's remedies represent remedies available under New York law.

CONCLUSION

In light of the Court's determination that the Rehabilitation Plan meets the standard as articulated in the Standard of Review section above, the Court confirms that:

(1) the terms and conditions of this Plan and the other Transaction Documents, and the transactions contemplated hereby and thereby are enforceable;

(2) that this Plan, and the other Transaction Documents are fair, just and reasonable to Policyholders, creditors, the shareholder of CIC, and the public;

(3) that all executory portions of the Transaction Documents are approved and made valid, binding and enforceable in the event of a future insolvency of CIC; and

(4) that the reinsurers of Cedants (other than the Reinsurer) are not prejudiced by and have no lawful basis to avoid or terminate their contractual obligations to Cedants pursuant to such reinsurance agreements as a result of the transactions contemplated herein or in the Transaction Documents.

ACCORDINGLY, IT IS HEREBY ORDERED THAT

All Objections not otherwise ruled on in this Order are OVERRULED and preserved on appeal. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 534.) The Commissioner's Request for Judicial Notice is GRANTED as to Exhibits 1 –7 and 10 and GRANTED, BUT NOT FOR THE TRUTH OF THE MATTERS ASSERTED THEREIN, as to Exhibits 8 and 9.

The Commissioner's Application and Application for Order Approving Rehabilitation Plan is GRANTED and the Rehabilitation Plan is adopted as amended. A true and correct copy of the approved, amended Rehabilitation Plan is attached to this Order as Attachment 1 and incorporated herein by this reference.

The Court's Order Appointing Insurance Commissioner as Conservator and Restraining Orders remain in full force and effect until expressly lifted or amended by subsequent order of the Court. The Court shall continue to exercise sole and exclusive jurisdiction over this Rehabilitation Plan and any claims pending against CIC.

Dated: 3-7-2024

Honorable Susan L. Greenberg

ATTACHMENT 1

CALIFORNIA INSURANCE COMPANY REHABILITATION PLAN

This REHABILITATION PLAN (the "Plan"), dated October 19, 2020, is made and established by Ricardo Lara, Insurance Commissioner of the State of California ("Commissioner"), in his capacity as the statutory conservator ("Conservator") of California Insurance Company ("CIC"), a California domiciled property and casualty insurance company in statutory conservation under California Insurance Code sections 1010-1062.

RECITALS

A. On November 4, 2019, CIC was placed into conservation ex parte by the Superior Court of San Mateo County, California, in the action entitled *Insurance Commissioner of the State of California v. California Insurance Company* (Case No. 19 CIV 06531 CPF-11-511261) at the request of the Commissioner, who was appointed the Conservator of CIC pursuant to Insurance Code section 1011(c). The court proceeding concerning the conservation shall be referred to herein as the "Conservation Proceeding" and the San Mateo Superior Court assigned to preside over the Conservation Proceeding shall be referred to as the "San Mateo Superior Court."

B. The Commissioner brought the Conservation Proceeding to respond to issues relating to Steven M. Menzies, an individual and pre-conservation Chief Executive Officer and sole indirect shareholder of CIC ("Menzies"), and CIC's attempt to consummate the sale of CIC to Menzies by unlawfully seeking to merge CIC into a newly created New Mexico entity, California Insurance Company, Inc. II ("CIC II"), without prior approval of the Commissioner as required by Insurance Code section 1215.2. The November 4, 2019, Order issued by the San Mateo Superior Court shall be referred to herein as the "Conservation Order."

C. The Conservator, having determined it to be in the best interests of the Policyholders, creditors, the shareholder of CIC and the public to resolve the issues requiring the Conservation Proceeding, to address the various issues underlying and pertaining to this Conservation Proceeding and litigation involving Policies, and to structure a plan for the rehabilitation of CIC, has now established this Plan and the other Transaction Documents to set forth all material terms and provisions for a comprehensive and integrated plan of rehabilitation for CIC. The Conservator shall have full authority to perform or take actions he deems necessary to ensure performance by CIC of any and all obligations required to be performed by CIC under this Plan.

D. Pursuant to this Plan and the other Transaction Documents described herein, effective as of the Closing, CIC shall, among other things, (1) perfect its attempted redomestication from California to New Mexico, on the terms and subject to the conditions set forth in this Plan; (2) enter into the Assumption Reinsurance and Administration Agreement to provide for the reinsurance and assumption of all in-force California, Connecticut and New York Policies issued by CIC and Applied Underwriters Captive Risk Assurance Company, Inc., a New Mexico domiciled property and casualty insurance company ("AUCRA") and the reinsurance of all liabilities of CIC and AUCRA to California, Connecticut and New York based Policyholders incurred prior to the Closing, and providing that the California, Connecticut and New York based Policyholders have the right to recover directly from the Reinsurer any of CIC's and AUCRA's obligations under the Policies; (3) surrender for cancellation its

California certificate of authority authorizing CIC to transact insurance in California by withdrawing from the state pursuant to Insurance Code section 1070 et seq.; (4) offer to settle Pending Litigation and Subsequent Litigation, as those terms are defined in Schedule 2.6, on reasonable terms as set forth herein; and (5) upon the consummation of the merger of CIC into and with CIC II, change the name of CIC II to a name that does not include the word "California" or any derivation of the word "California".

E. The Conservator has determined that this Plan, including the transactions contemplated by it, and the other Transaction Documents are fair and equitable to, and in the best interests of, the Policyholders, creditors, the shareholder of CIC, and to the insurance-buying public of the states in which CIC operates.

F. Any obligations that Menzies is required to perform under this Plan shall be performed by Menzies or his successors (including, but not limited to, his successors in interest or successors in position with CIC), or by CIC itself.

ARTICLE I
DEFINITIONS

In this Plan, unless otherwise specifically provided or the context so requires, the terms listed below shall have the following definitions and shall include the plural as well as the singular:

"Affiliate" means, with respect to a Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person.

"AUI" means Applied Underwriters, Inc., a corporation domiciled in Nebraska and Affiliate of CIC and AUCRA.

"AUCRA" means Applied Underwriters Captive Risk Assurance Company, Inc., a New Mexico domiciled property and casualty insurance company and Affiliate of CIC and AUI.

"Business" means Cedants' California, Connecticut and New York business and operations consisting of the issuance and administration of any insurance policy including all contracts, policies, certificates, binders, slips, covers or other agreements of workers' compensation and employers liability insurance as defined in the Transaction Documents, including all supplements, riders and endorsements issued or written in connection therewith.

"Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of California are authorized or obligated by law or executive order to be closed.

"CDI" means the California Department of Insurance.

"Cedants" means CIC and AUCRA.

"CIC" has the meaning set forth in the Preamble of this Plan, or a successor in interest.

"CIC II" means California Insurance Company II, a New Mexico domiciled property and casualty insurance company.

"Closing" means the closing of the transactions contemplated by this Plan.

"Closing Date" means 10:00 a.m., local time, on the date of Closing, as described in Article VII of this Plan.

"Commissioner" has the meaning set forth in the Recitals.

"Conservation Order" has the meaning set forth in the Recitals.

"Conservation Proceedings" has the meaning set forth in Recitals.

"Conservator" has the meaning set forth in the Preamble.

"Effective Date" means the date that the San Mateo Superior Court issues its Rehabilitation Order.

"Effective Time" has the meaning set forth in Article I of the Reinsurance Agreement.

"Governmental Authority" means any government or political subdivision thereof, whether federal, state or local, or any agency, commission, department or other instrumentality of any such government or political subdivision.

"Insurance Code" means the California Insurance Code, including the regulations thereunder in effect from time to time.

"Knowledge" means, as to a specific matter, actual knowledge after reasonable investigation of the circumstances pertaining to the specific matter.

"Law" means all applicable laws, decisions, rules, regulations, ordinances, codes, statutes, judgments, injunctions, orders, decrees, licenses, permits, policies, administrative interpretations and other requirements of Governmental Authorities.

"Lien" means any mortgage, pledge, hypothecation, assignment, lien (statutory or otherwise), preference, priority, charge or other encumbrance, adverse claim (whether pending or, to the knowledge of the Person against whom the adverse claim is being asserted or threatened) or restriction of any kind affecting title or resulting in an encumbrance against property, real or personal, tangible or intangible, or a security interest of any kind, including, without limitation, any conditional sale or other title retention agreement, any right of first refusal on real property, and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statute) of any jurisdiction (other than a financing statement which is filed or given solely to protect the interest of a lessor). "Lien" shall not include liens that arise out of a workers' compensation claim for which the Workers'

Compensation Appeals Board may have jurisdiction.

"Litigation" means any action, cause of action (whether at law or in equity), arbitration, hearing, inquiry, proceeding claim or complaint by any Person alleging potential liability, wrongdoing or misdeed of another Person, or any administrative or other similar proceeding, criminal prosecution or investigation by any Governmental Authority or arbitration panel alleging potential liability, wrongdoing or misdeed of another Person.

"Management Services Agreement" means the Agreement made by and between CIC and AUI, pursuant to which AUI performs certain services for CIC in the conduct of CIC's insurance operations, that was executed on July 26, 2005, as well as the addendum executed September 3, 2019, that stipulates that the Agreement remains in force for two years from September 30, 2019.

"Notification Package" has the meaning set forth in Section 3.1.

"Permits" means all licenses, franchises, permits, orders, approvals, consents, authorizations, qualifications and filings with and under all Federal, state or local laws and of all Governmental Authorities, including, without limitation, state insurance regulatory authorities.

"Person" means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, public, governmental, judicial or regulatory authority or body or other entity.

"Plan" has the meaning set forth in the Preamble.

"Policies" means insurance policies issued by Cedants to California, Connecticut and New York Policyholders or to cover, in whole or in part, employees in California, Connecticut and New York. "Policies" include (1) all guaranteed-cost workers' compensation and employers' liability insurance policies issued by CIC, and (2) all workers' compensation and employers' liability insurance policies, supplements, endorsements, riders and ancillary agreements in connection therewith, classified by the Cedants as SolutionOne Profit Sharing or EquityComp, including Reinsurance Participation Agreements ("RPAs") entered into by Cedants, but excluding FELA and Jones Act exposures. As used in this Plan, "Policies" includes policies or other agreements that are (1) in effect as of the Effective Time; (2) become effective after the Effective Time, including through (a) the reinstatement of lapsed policies pursuant to provisions therein or of applicable Law, (b) the issuance or renewal thereof by Cedants after the Effective Time to honor quotes outstanding as of the Effective Time, or to satisfy renewal rights of employers under contractual provisions or applicable Law, or (c) modifications agreed to by the Reinsurer on behalf of Cedants pursuant to the authority granted to the Reinsurer under Section 7.01 of the Reinsurance Agreement; and (3) guaranteed-cost workers' compensation and employers liability insurance policies issued by CIC to California, Connecticut and New York Policyholders that have expired prior to the Closing Date, where the gross liabilities and obligations of CIC arising under or in connection with such policies are unpaid or unperformed as of the Effective Time.

"Policyholder" means (a) any Person that is named as an insured under a Policy or (b) any Person other than the CIC or an Affiliate of CIC that is named as a party to an RPA issued in conjunction with a Policy.

"Policy Liabilities" means those Policy liabilities of Cedants reinsured and assumed by the Reinsurer and as more specifically defined in the Reinsurance Agreement.

"Procedural Order" means the San Mateo Superior Court's July 30, 2020 Order Setting Briefing Schedule, Hearing Date, and Procedures for Conservator's Application for Order Approving Rehabilitation Plan for California Insurance Company, as well as any subsequent orders granting stipulations as to the hearing date and briefing schedule contained therein, or any other subsequent court-authorized amendments to the July 30, 2020 Order.

"Rehabilitation Order" means the order of the San Mateo Superior Court approving this Plan and the other Transaction Documents (including all transactions contemplated hereby and thereby), as submitted to the Court by the Conservator with his motion to approve this Plan, without modification, unless such modification has been approved by the Conservator.

"Reinsurance Agreement" means the Assumption Reinsurance and Administration Agreement to be entered into among the Conservator, on behalf of Cedants, and Reinsurer on the Closing Date, substantially in the form of Exhibit A attached hereto, as such form may be modified by agreement between the Conservator and Reinsurer.

"Reinsurer" means an insurer that is authorized to transact workers' compensation insurance in the States of California, Connecticut and New York and which is approved by the Conservator as the Reinsurer hereunder.

"San Mateo Superior Court" has the meaning set forth in Recitals.

"SAP" means statutory accounting principles prescribed or permitted by the CDI consistently applied throughout the specified period and in the comparable period in the immediately preceding year in connection with the preparation of the statutory financial statements of CIC.

"Transaction Documents" means this Plan, the Assumption Reinsurance and Administration Agreement, and all exhibits thereto.

"Transferred Assets" means the sum of (1) admitted assets of Cedants free and clear of any Liens, having a net admitted asset value determined in accordance with SAP as prescribed or permitted by the CDI equal to Cedants' net unearned premium reserve, loss and loss adjustment expense (including losses that have been incurred but not reported) reserve, if any, with respect to the Policies; (2) any collateral posted by a Policyholder maintained by Cedants, pursuant to the terms of the Policies to secure the obligations of the Policyholders under the Policies; and (3) any amounts due Cedants under any reinsurance agreements in effect on the Closing Date among Cedants and any reinsurer (other than the Reinsurer) relating to the Policies.

In the event of a conflict between the defined terms in this Plan and the defined terms in the Transaction Documents and Schedule 2.6, the defined terms in the Transaction Documents and Schedule 2.6 shall control. Any defined term used herein that is not expressly defined in this Plan shall have the meaning set forth in the applicable Transaction Document or Schedule 2.6, as applicable. The Recitals set forth are incorporated as part of this Plan.

ARTICLE II
TRANSACTIONS

Section 2.1. Transaction Documents. Subject to the terms, provisions and conditions of this Plan, the Conservator, on behalf of CIC, and where applicable, the Reinsurer, shall enter into the transactions set forth in this Plan and the Transaction Documents.

Section 2.2. Reinsurance Agreement. Cedants shall enter into the Assumption Reinsurance and Administration Agreement to provide for the reinsurance and assumption of all in-force California, Connecticut and New York Policies issued by Cedants and the reinsurance of all liabilities of Cedants to California, Connecticut and New York Policyholders incurred prior to the Closing with the Reinsurer granting the California, Connecticut and New York Policyholders the right to recover directly from the Reinsurer any of CIC's and/or obligations under the Policies.

(a) Selection of Reinsurer. The Conservator shall select an insurer authorized to write workers' compensation insurance in California, Connecticut and New York that is qualified to enter into the Reinsurance Agreement, as follows:

(1) The Conservator shall prepare and publish a Solicitation of Expressions of Interest inviting certain insurers that are authorized to transact workers' compensation business in California, Connecticut and New York to submit an Expression of Interest to indicate their possible interest in entering into the Reinsurance Agreement as the Reinsurer. The Solicitation of Expressions of Interest shall include a detailed summary of the Policies to be reinsured and assumed, which shall detail the loss and unearned premium reserves; all related reinsurance, and other rights; rights to future premiums; and such additional information that the Conservator determines may be useful to an insurer to evaluate whether to respond to the Solicitation of Interest. The Solicitation of Expressions of Interest shall be accompanied by an actuarial opinion by an actuary retained by the Conservator, the cost of which shall be paid from the assets of CIC, attesting to the accuracy of the information provided. The Solicitation of Expressions of Interest shall specify a date by which Expressions of Interest shall be submitted to the Conservator.

(2) Expressions of Possible Interest shall indicate the financial terms that would be required for the insurer to enter into the Reinsurance Agreement. Expressions of Interest shall be treated as confidential if so requested by the submitting insurer.

(3) An Affiliate of CIC may submit an Expression of Interest but shall indicate therein that it agrees to be bound by the requirement of Section 2.2(c) regarding administration of claims by a third-party administrator.

(4) The Conservator shall evaluate the Expressions of Interest and may engage in negotiations with individual insurers that have submitted Expressions of Interest, which negotiations shall be confidential. Upon completions of his evaluation, the Conservator in his sole discretion shall select the Reinsurer, taking into consideration the interests of Policyholders, creditors, and shareholders, consistent with the public interest.

(5) Notwithstanding the confidentiality provision in paragraph (2) above, the Expression of Interest submitted by the selected Reinsurer shall be a public document.

(6) In the course of evaluating and selecting the Reinsurer, the Conservator may retain such experts as he deems necessary or appropriate, the costs of which shall be paid out of the assets of CIC pursuant to Section 8.2 hereof.

(7) Upon selection of a Reinsurer, the Conservator shall promptly file with the Conservation Court an application for approval of the Reinsurer.

(b) Reinsurance Agreement. Effective as of the Closing Date, Cedants and the Reinsurer shall enter into the Reinsurance Agreement, in form and substance attached hereto as Exhibit A, whereby, effective as of the Closing Date, Cedants shall cede to Reinsurer and Reinsurer shall reinsure and assume the Policies and the Policy Liabilities, which, if the Reinsurer is an Affiliate of CIC, shall be administered by a third-party administrator as set forth in this section. The primary purpose and intent of the Reinsurance Agreement is to provide, subject to the terms and limitations set forth in the Reinsurance Agreement, for the transfer and assumption of all in-force Policies and the reinsurance of all liabilities incurred under all such in-force and expired Policies to the extent the same are unpaid or unperformed on or after the Closing, before deduction for all other applicable cessions, if any, under Cedants' reinsurance programs. The provisions for the transfer and assumption of the Policies and the unpaid or unperformed liabilities and obligations incurred under such Policies prior to the Closing are set forth in the Reinsurance Agreement.

(c) Third-Party Administrator. If the Reinsurer is an Affiliate of CIC, the Policies and Policy Liabilities reinsured and assumed pursuant to the Reinsurance Agreement shall be administered by a qualified third-party administrator appointed by the Conservator. The third-party administrator shall administer all claims arising under the Policies reinsured and assumed by the Reinsurer, including adjustment and payment of claims and setting of loss reserves, until all of the Policies and Policy Liabilities reinsured and assumed pursuant to this Plan have been paid or otherwise extinguished.

Section 2.3. [Blank]

Section 2.4. Redomestication of CIC. As of the Closing Date, the Conservator on behalf of CIC shall effectuate the merger of CIC into and with California Insurance Company II, Inc. ("CIC II"), a New Mexico domiciled property and casualty insurance company, thereby completing the attempted redomestication of CIC from California to New Mexico, and upon the effective date of the merger of CIC into and with CIC II and the transfer of the domicile of CIC to New Mexico, CIC shall cease to be a California domestic insurer. The Conservator, on behalf of CIC, shall provide the CDI with information and documentation reasonably necessary to complete the proposed transfer of domicile of CIC from California to New Mexico. The CDI shall perform any ministerial acts necessary to complete the redomestication of CIC from California to New Mexico.

Section 2.5. Cancellation of California Certificate of Authority. As of the Closing Date, the California Certificate of Authority of CIC shall be cancelled by operation of law pursuant to Insurance Code section 701 as of the effective date of the merger of CIC into and with CIC II as

provided in Section 2.4. Prior to the effective date of the merger of CIC into and with CIC II and the cancellation of the California certificate of authority of CIC, the Conservator, on behalf of CIC, shall discharge the liabilities of CIC to residents of California, Connecticut and New York by causing the primary liabilities under policies insuring residents of California, Connecticut and New York to be reinsured and assumed by the Reinsurer pursuant to the Reinsurance Agreement. The CDI shall perform any ministerial acts necessary to cancel the California Certificate of Authority of CIC.

Section 2.6. Pending and Subsequent Litigation. Schedule 2.6 hereto, which is hereby incorporated by reference as if fully set forth in this Plan, sets forth the terms and conditions under which Claimants, as defined in Schedule 2.6, will be offered by Cedants the opportunity to settle Pending Litigation and Subsequent Litigation, as defined therein. Where such a Claimant accepts the offer to settle, the Claimant, as defined in Schedule 2.6, and Cedants shall enter into a mutual release in accordance with the provisions of Schedule 2.6. Any liability to Cedants that results from the Pending Litigation and Subsequent Litigation in which the Claimant has not accepted the offer shall be transferred to the Reinsurer pursuant to the Reinsurance Agreement and thereafter shall be an obligation of the Reinsurer pursuant to the Reinsurance Agreement. The Reinsurer shall assume and shall be authorized to defend against any claims and matters, and to pursue and collect on any counterclaims and matters, arising in that Pending Litigation or in Subsequent Litigation.

After every such Claimant has made an Election, as defined in Schedule 2.6, the Conservator shall determine a reserve amount sufficient to cover all Pending Litigation not resolved by settlement and all matters identified in the Schedule of Subsequent Litigation and Potential Subsequent Litigation pursuant to Schedule 2.6. CIC will deposit 150% of that reserve amount in a special deposit account, pursuant to the terms and conditions of that account, which shall be approved by the Conservator, to secure all final claims in said Pending Litigation and Subsequent Litigation against Cedants. Control of the special deposit account shall be transferred to the Reinsurer upon the Closing. Cedants, their successors, and their Affiliates shall preserve all papers, books, claims files, accounting records and other records pertaining to the Pending Litigation and Subsequent Litigation for no less than five years after the Closing; for Pending Litigation and Subsequent Litigation not settled during the Conservation, such papers, books, claims files, accounting records and other records pertaining to the Pending Litigation and Subsequent Litigation shall be preserved for no less than five years after final resolution of the relevant case except as pertaining to workers' compensation claims in which benefits are potentially payable to an injured worker; in that event, such papers, books, claims files, accounting records and other records shall be indefinitely preserved. On the Closing Date, Cedants shall transfer to the Reinsurer all such papers, books, claims files, accounting records and other records pertaining to the Pending Litigation and Subsequent Litigation in its possession to the Reinsurer, which shall likewise preserve the papers, books, claims files, accounting records and other records pertaining to the Pending Litigation and Subsequent Litigation for the same period of time.

The Elections set forth in Schedule 2.6 shall be available exclusively to the Claimants in the Pending Litigation and Subsequent Litigation, as defined in Schedule 2.6, and Cedants shall not be required to offer the Elections to any Person other than such Claimants pursuant to this Agreement.

Section 2.7. Assignment of Medical Provider Agreements. The Rehabilitation Order shall assign from Cedants to the Reinsurer any agreements among Cedants and providers of medical services that are or may be necessary for the Reinsurer to service the Policies being reinsured and assumed by the Reinsurer.

Section 2.8. Transfer of Cedants Assets to Reinsurer. Subject to the terms and conditions contained in this Plan and the Reinsurance Agreement, at the Closing, the Cedants shall (1) convey and transfer to the Reinsurer, Cedants' right, title and interest to admitted assets of Cedants, free and clear of any Liens, having a net admitted asset value determined in accordance with SAP equal to Cedants' net unearned premium reserve, loss and loss adjustment expense (including losses that have been incurred but not reported) reserve, if any, relating to the Policies reinsured and assumed by Reinsurer under the Reinsurance Agreement; (2) convey and transfer to the Reinsurer any collateral posted by any California, Connecticut and New York Policyholder of Cedants pursuant to the terms of the Policies maintained by Cedants, to secure the obligations of the Policyholders under the Policies; (3) assign to Reinsurer any amounts due Cedants on or after the Closing Date under any reinsurance agreements in effect on or after the Closing Date among Cedants and any reinsurer (other than the Reinsurer) relating to the Policies reinsured and assumed by the Reinsurer pursuant to the Reinsurance Agreement; and (4) assign to Reinsurer any premiums receivable on and after the Closing Date attributable to the Polices reinsured and assumed by Reinsurer pursuant to the Reinsurance Agreement.

Section 2.9. Execution of Documents Evidencing Transfers and Assignments. At the Closing, Cedants shall deliver to the Reinsurer, such bills of sale, assignments, stock powers, bond powers, evidences of consent and such other transfer instruments or documents, all in form and substance satisfactory to the Reinsurer as may be reasonably necessary or desirable to evidence or perfect the sale, conveyance, transfer, assignment and delivery of, title to and right to use the assets transferred to Reinsurer by Cedants pursuant to Section 2.8 to Reinsurer, and at the Closing Reinsurer shall deliver receipts to Cedants for the assets transferred to Reinsurer pursuant Section 2.8.

Section 2.10. Name Change. After the Closing Date, upon the consummation of the merger of CIC into and with CIC II, Menzies shall cause CIC II to cease using any and all trade names, trademarks, logos and trade dress, including without limitation, those containing the words "California", or any other name, term or identification that includes any derivation of the word "California", in its policies, advertising, literature, inventory, products, labels, packaging, supplies or other materials relating to CIC and CIC II as soon as practicable, but in any event, subject to any approval by applicable Governmental Authorities, within one hundred and twenty (120) days after the Closing Date. After one hundred and twenty (120) days after the Closing Date, any inventory of CIC and CIC II supplies utilized by CIC or CIC II shall be relabeled (by sticker or other reasonable method) with a trade name and trademarks that do not include the words "California" or" CA" or any derivation of the foregoing. Insofar as CIC's name is used in CIC's outstanding agreements, CIC shall be entitled to use the names set forth therein to the extent necessary to enforce fully the provisions of those agreements until the termination or renewal of those agreements in the ordinary course.

ARTICLE III
COURT APPROVAL AND NOTICE

Section 3.1. Court Approval of Plan and Notification Package. Pursuant to the Procedural Order, there will be a Hearing on the Rehabilitation Plan Application at the San Mateo Superior Court at a time and date specified in that Order, at which the Conservator will request the San Mateo Superior Court to issue the Rehabilitation Order. Pursuant to the Procedural Order, the Conservator shall give, at the last known address and no later than the date specified in the Procedural Order, written notice of the Rehabilitation Plan Application to (1) every Policyholder of an in-force or expired Policy, at the last known address of such Policyholders as set forth in the records of Cedants; (2) the direct and indirect shareholders of Cedants and their respective directors, if any; (3) known creditors of Cedants; (4) reinsurers of Cedants other than the Reinsurer; and (5) other interested parties. As required by the Procedural Order, the notice, referred to herein as the "Notification Package" shall (i) summarize the proposed Rehabilitation Plan and the Transaction Documents; (ii) notify recipients of the hearing date on the Conservator's Rehabilitation Plan Application; (iii) provide an Internet link to the proposed Rehabilitation Plan and Rehabilitation Plan Application and advise recipients of the Notification Package how they may request and receive paper copies of such documents; (iv) explain the opportunity to file papers in connection with the Hearing on the Rehabilitation Plan Application and notify recipients of the Notification Package that only persons or entities filing papers will be entitled to make presentations at such Hearing; and (v) notify recipients of the Notification Package that any person or entity not filing papers shall be deemed to have forever waived any and all objections, comments, suggestions, or any other matter they may have made with respect to the Rehabilitation Plan Application and the proposed Rehabilitation Plan.

ARTICLE IV
CONSERVATOR ACTIONS

From the Effective Date to the Closing Date, the Conservator shall do the following:

Section 4.1. Conduct of Business. Prior to the Closing Date, except for the transactions contemplated hereby, and except as otherwise required or contemplated hereunder to effectuate the transactions set forth in Article II, the Conservator shall use its reasonable efforts to:

(a) Cause CIC to carry on the Business in the ordinary course except as modified to comply with applicable Law and to effectuate the transactions contemplated by this Plan and the other Transaction Documents;

(b) Cause CIC to use its reasonable best efforts to preserve its assets and the Business;

(c) Cause CIC not to enter into any contract or agreement relating to the Business, other than (1) such contracts or agreements that are entered into in the ordinary course of business consistent with applicable Law, and (2) any such contract or agreement not entered into in the ordinary course of business necessary or appropriate to consummate the transactions contemplated by this Plan and the Transaction Documents;

(d) Cause CIC not to make, without prior written consent of the Conservator (1) any material change, except in the ordinary course of business, in its assets (including, but not limited to, any change in the composition of such assets so as to materially alter the proportion of cash thereof) or liabilities, or (2) any commitment for any capital expenditures including, without

limitation, replacements of equipment in the ordinary course of business, involving, in the aggregate, more than $100,000;

(e) Cause CIC not to carry on any negotiations or enter any agreement with any other Person relating to the sale of any of CIC's Business;

(f) Cause CIC not to cancel, surrender or let lapse any insurance or reinsurance policies issued to CIC, solely as such policies relate to CIC's Business;

(g) Cause CIC to cooperate and take all actions necessary or appropriate to effectuate the provisions of this Plan and the Transaction Documents and to refrain from taking any action that would prevent compliance with any of the provisions of this Plan or the Transaction Documents; and

(h) Cause CIC to direct AUI to cooperate with the Conservator and perform all duties set forth in the Management Services Agreement, as is necessary or appropriate to carry out the

terms of this Plan.

Section 4.2. Notice of Changes and Defaults. Conservator shall promptly notify Menzies and the Reinsurer of the occurrence or the non-occurrence of any event, condition or circumstance, or the discovery of any inaccuracy, omission or mistake, of which it becomes aware during such period that would materially adversely affect the ability of Conservator to consummate the transactions contemplated by this Plan.

Section 4.3. Delivery of Motion, Notice, etc. The Conservator shall provide to Menzies and his counsel copies of any motion or notice filed with the San Mateo Superior Court or with any other Person by the Conservator as contemplated by this Plan and of any order issued by the San Mateo Superior Court to the Conservator.

Section 4.4. Orderly Transition. Prior to the Closing, the Conservator, Menzies and the Reinsurer shall: (1) mutually cooperate and provide to each other all reasonable assistance in furtherance of the implementation and effectuation of the Plan and the Transaction Documents; (2) execute, acknowledge, deliver, file and record such further certificates, amendments, instruments, agreements and documents (including the filing of any notices with any Governmental Authorities); and (3) take all other actions as may be required by applicable Law or as may be necessary or advisable to carry out the intent of this Agreement and the other Transaction Documents following San Mateo Superior Court approval of the Plan. The Conservator shall have full authority to perform or take actions he deems necessary to ensure performance by CIC of any and all obligations required to be performed by CIC under this Plan.

ARTICLE V
COVENANTS OF MENZIES AND REINSURER

Section 5.1. Additional Consents and Approvals. Within thirty (30) days of the issuance of the Rehabilitation Order, Menzies and the Reinsurer shall file with the appropriate Governmental Authorities any applications, notices or other documents necessary to obtain any authorizations, consents or approvals that are required to be obtained, made or given to consummate the transactions contemplated hereby and Menzies and the Reinsurer shall use their respective reasonable efforts to obtain any such necessary authorization, consent, approval from such Governmental Authorities as is required to be obtained, made or given by such Person to consummate the Transactions contemplated by this Plan.

Section 5.2. Notice of Litigation and Investigations. From the Effective Date through the Closing Date, Menzies shall promptly notify Conservator of any Litigation at law or in equity, that individually or in the aggregate have or may reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or the Transaction Documents or on the ability of Menzies to perform his obligations under this Agreement and the other Transaction Documents, and any investigation by any Governmental Authority or law enforcement agency that is commenced or, to the Knowledge of Menzies, threatened against Cedants, against any property or asset of Cedants, against any officer or director of Cedants with respect to the affairs of Cedants, or with respect to the Business, and of any request for additional information or documentary materials by any Governmental Authority, in connection with the transactions contemplated hereby.

Section 5.3. Notice of Changes and Defaults. From the Effective Date through the Closing Date, Menzies shall promptly notify Conservator of the occurrence or the non-occurrence of any event, condition or circumstance, or the discovery of an inaccuracy, omission or mistake, of which it becomes aware during such period that would that would materially adversely affect the ability of Conservator, Cedants, or Reinsurer to consummate the transactions contemplated by this Plan.

ARTICLE VI
CONDITIONS PRECEDENT TO CLOSING

Section 6.1. Conditions Precedent to Closing. Except as otherwise expressly provided herein, the obligations of each of the Conservator, Menzies, Cedants, and Reinsurer to proceed with the Closing are subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent:

(a) Rehabilitation Order. The San Mateo Superior Court shall have issued the Rehabilitation Order as defined in Article I, and all appeals or other appellate court review thereof have been waived, time-barred, or determined;

(b) Terms of the Rehabilitation Order. The Rehabilitation Order shall confirm: (1) the enforceability of the terms and conditions of this Plan and the other Transaction Documents, and the transactions contemplated hereby and thereby; (2) that this Plan, and the other Transaction Documents are fair, just and reasonable to Policyholders, creditors, the shareholder of CIC, and the public; (3) that all executory portions of the Transaction Documents are approved and made valid, binding and enforceable in the event of a future insolvency of CIC; (4) that the reinsurers of Cedants (other than the Reinsurer) are not prejudiced by and have no lawful basis to avoid or terminate their contractual obligations to Cedants pursuant to such reinsurance agreements as a result of the transactions contemplated herein or in the Transaction Documents, and (4) such other matters relating to this Plan, the Transaction Documents and the transactions contemplated hereby and thereby as the Conservator shall deem necessary or desirable;

(c) Consents. All consents, approvals and certifications, in form and substance reasonably satisfactory to the Conservator, Menzies, Cedants, and Reinsurer, of third parties or Governmental Authorities whose consent, approval or certification is required for the consummation of the transactions contemplated by this Plan and the other Transaction Documents;

(d) Notification Package. The Notification Package shall have been sent to each Policyholder and other recipient in accordance with Section 3.1 and with the Procedural Order; and

(e) No Prohibition. There shall not have been any action taken, or any statute, regulation, judgment, or order enacted, entered or issued that, directly or indirectly (1) prohibits

or makes illegal the consummation of the transactions contemplated by this Plan or the other Transaction Documents; or (2) imposes any material conditions or limitations on the Conservator's ability to exercise his full rights under this Plan or the other Transaction Documents.

Section 6.2. Conditions Precedent to Menzies' and Reinsurer's Obligation to Close. The obligation of Menzies and Reinsurer to proceed with the Closing is subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent (in addition to those described in Section 6.1 hereof):

(a) Performance by the Conservator. The Conservator shall have performed and complied, in all material respects, with all provisions of the agreements and covenants required by this Plan and the other Transaction Documents to be performed or complied with by each of them prior to or at the Closing, and there shall have been no adverse event or occurrence which materially impairs or interferes with the ability to consummate the transactions contemplated by this Plan or the other Transaction Documents and to perform each of their respective obligations under this Plan and the other Transaction Documents;

(b) Corporate Matters. The Conservator shall have delivered to Menzies and Reinsurer such other documents, instruments, certifications and further assurances reasonable and necessary to effect the transactions contemplated by this Plan and the other Transaction Documents; and

(c) Transaction Documents. On or prior to the Closing Date, the Conservator, Cedants and the Reinsurer shall have executed and delivered to Menzies, the Transaction Documents, and all of the conditions precedent stated in the Transaction Documents shall have been satisfied.

Section 6.3. Conditions Precedent to Conservator's Obligations to Close. The obligation of the Conservator to proceed with the Closing shall be subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent (in addition to those described in Section 6.1 hereof):

(a) Performance by Menzies, Cedants and Reinsurer. Menzies, Cedants and the Reinsurer shall have performed and complied, in all material respects, with all provisions of the covenants and agreements required by this Plan to be performed or complied with by it prior to or at Closing, and there shall have been no adverse event which materially impairs or interferes with the ability of Menzies, Cedants or Reinsurer to consummate the transactions contemplated by this Plan and the other Transaction Documents and to perform their respective obligations under this Plan and the other Transaction Documents;

(b) Satisfaction of Judgments. CIC shall have fully satisfied all outstanding judgments entered prior to the Closing Date against CIC in any Litigation. For purposes of this provision, "outstanding judgment" means any final judgment on a matter brought in any state or federal court, arbitration, or mediation, where CIC has not paid the full amount required to satisfy the judgment. A "final judgment" includes final orders that have been affirmed on appeal, or where the final order is no longer appealable because, as of the Closing Date, the time for

appeal has lapsed and there is no appeal on file. In addition, all outstanding judgments entered against any Affiliate arising out of a Policy shall have been satisfied;

(c) Transaction Documents. On or prior to the Closing Date, Menzies, Cedants and Reinsurer shall have executed and delivered the Transaction Documents; and

(d) Expenses. On or prior to the Closing Date, CIC shall have paid any unpaid outstanding invoices for expenses described in Section 8.2 hereof.

ARTICLE VII
CLOSING

Section 7.1. Closing. The Closing shall take place on the first Business Day following the satisfaction or waiver of all of the conditions set forth in Article VI (other than a condition which contemplate or require only delivery or filing of one or more documents immediately prior to or contemporaneously with the Closing) on the Closing Date at the principal offices of the Conservator, commencing at 10:00 a.m., local time, or at such other place and time as Menzies, the Conservator and the Reinsurer shall mutually agree.

Section 7.2. Sequence of Actions Necessary to Closing. The transactions necessary to Close under this Plan and the other Transaction Documents shall occur in the following sequence:

(a) After every Claimant has received their Settlement Offer and made an Election or declined to make such an Election, as set forth in Schedule 2.6, the Conservator shall determine a reserve amount sufficient to cover all Pending Litigation and Subsequent Litigation not resolved by settlement. CIC shall deposit 150% of that reserve amount in a special deposit account with the Reinsurer, pursuant to the terms and conditions of that account, which shall be approved by the Conservator, to secure all final claims in said Pending Litigation and Subsequent Litigation against Cedants, and Reinsurer;

(b) Cedants shall, within thirty (30) days of the Election by each Claimant, pay, or cause to be paid, the amount to which the Claimant is entitled. If a Cedant is entitled to receive payment from the Claimant under the Election, the Claimant shall make that payment within thirty (30) days of the Election or such further date as the Conservator may permit. Notwithstanding the foregoing, the failure of a Claimant to make payment under the Election shall not delay Closing; and

(c) After each of the Claimants has made their Election and received payment pursuant to Schedule 2.6 and each of the conditions precedent to the Closing set forth in Article VI hereof have been met or waived, the transactions set forth in this Plan and the other Transaction Documents shall be consummated pursuant to the terms and subject to the conditions set forth herein and therein.

Section 7.3. Items to be Delivered at Closing by the Conservator. At the Closing, upon the terms and subject to the conditions contained in this Plan, the Conservator on behalf CIC shall deliver or cause to be delivered to Menzies and Reinsurer the following:

(a) A certificate of the Conservator, dated as of the Closing Date, certifying that CIC has performed and complied in all material respects with all agreements and conditions required by this Plan to be performed and complied with by CIC at the Closing;

(b) Such orders of the San Mateo Superior Court confirming the terms of this Plan and the other Transaction Documents and the transactions contemplated hereby and thereby relative to the respective transactions and interests under this Plan; and

(c) Such other certificates and Closing documents as may be necessary for the consummation of the transactions contemplated by this Plan and the other Transaction Documents.

Section 7.4. Items to be Delivered at Closing by the Reinsurer. At the Closing, upon the terms and subject to the conditions contained in this Plan, the Reinsurer shall deliver, as appropriate, to the Conservator the following:

(a) A certificate of a duly authorized officer of Reinsurer, dated the Closing Date, certifying (1) that Reinsurer has performed and complied in all material respects with all agreements and conditions required by this Plan and the other Transaction Documents to be performed by Reinsurer at the Closing; (2) that Reinsurer has all requisite power and authority to execute and deliver the Reinsurance Agreement and any other documents required for the Closing to which it is a party and to consummate the transactions contemplated hereby and thereby; (3) that the execution, delivery and performance by Reinsurer of the Reinsurance Agreement will not violate any laws or statutes to which Reinsurer is subject, or its corporate charter or bylaws or any material indenture, contract or agreement to which Reinsurer is a party or by which it is bound; (4) that the Reinsurance Agreement has been duly executed and delivered by Reinsurer and constitutes the legal, valid and binding obligations of Reinsurer, enforceable against Reinsurer in accordance with its terms; and (5) if the Reinsurer is an Affiliate of CIC, an undertaking executed by Reinsurer confirming that the Reinsurer shall not issue or renew any policies in California unless such policies are in full compliance with all the applicable laws and regulatory requirements of the State of California;

(b) A copy of all resolutions adopted by the Board of Directors of Reinsurer, in each case relating to the transactions contemplated by this Plan and the other Transaction Documents, certified on the Closing Date to be true and correct and in effect by the Secretary or Assistant Secretary of Reinsurer, as the case may be; and

(c) Cedants shall have delivered the Transferred Assets to Reinsurer in compliance with the terms and subject to the conditions set forth in this Plan and the Reinsurance Agreement; and such other certificates and Closing documents as may be necessary for the consummation of the transactions contemplated by this Plan and the other Transaction Documents.

Section 7.5. Further Assurances after the Closing. Reinsurer shall, from time to time after the Closing, take such other proper actions and execute and deliver such other documents, instruments, certifications and further assurances as may reasonably be requested by another Person as required or necessary to effectuate the intent and purpose of this Plan and the other Transaction Documents.

Section 7.6. Reports to the Court Regarding Closing of Transactions, and Motion for Order Concluding Conservation Proceedings and Discharge of Conservator. After the Closing, the Conservator shall file such documents with the San Mateo Superior Court as are necessary to advise the Court of the Closing of the transactions contemplated by the Plan and the other Transaction Documents.

(a) After Closing, and at other times where the Conservator deems that significant milestones in the implementation of this Rehabilitation Agreement have been reached, the Conservator will file with the Court his Status Report making public the progress that has been made toward conclusion of the conservation.

(b) After the Closing and the consummation of the transactions set forth in this Plan, including full performance of Schedule 2.6, the Conservator shall apply to the Court for an order concluding the Conservation Proceedings and discharging the Commissioner as Conservator, but maintaining jurisdiction for the purpose of ensuring the enforcement of the Plan.

(c) Any and all claims arising out of or related to this Plan or to any of the other Transaction Documents shall be heard and determined by the San Mateo Superior Court, which shall have exclusive jurisdiction over any such disputes and shall have sole authority to determine the scope and nature of any remedies to be granted in connection with such claims.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1. Termination. This Plan may be terminated prior to Closing only as follows:

(a) By the Conservator, if the San Mateo Superior Court does not grant the Conservator's motion to approve the Plan, if any Governmental Authority that must grant a requisite regulatory approval has denied approval of the transaction, or if any Governmental Authority has issued an injunction prohibiting the transaction that has become final and nonappealable; or

(b) By the Conservator, upon his reasonable determination, that the financial condition of CIC has materially deteriorated to the point that the Conservator will be unable to pay the Reinsurer all amounts due under the Reinsurance Agreement, and thereafter retain adequate free assets and sufficient cash flow to fund the anticipated costs of administering the Conservation Proceeding.

(c) In the event of the termination of this Plan pursuant to this Section 8.1, this Plan shall thereafter become void and have no effect, and no Person shall have any liability or obligation to any other Person under this Plan or the other Transaction Documents, provided,

however, that if this Plan is terminated as a result of the violation of this Plan by any Person, such Person shall not be relieved of its liability for such violation.

Section 8.2. Expenses. All costs and expenses, including attorneys' fees, incurred with regard to taking possession of, conserving, conducting, and rehabilitating CIC (including the pre-conservation costs of preparing to take possession of and conserving CIC, and all costs and expenses, including attorneys' fees, incurred by the Conservator and the CDI in bringing and prosecuting the conservation proceeding and order, and incurred with regard to or in relation to the Rehabilitation Agreement and Rehabilitation Order, including but not limited to, the costs of or associated with the Independent Consultant as defined in Schedule 2.6, and otherwise dealing with the business, conduct, and property of CIC under the provisions of Insurance Code sections 1010 et seq.) shall be paid out of the funds and assets of CIC. The Commissioner does not waive or limit any right, authority, or discretion with respect to entitlement to costs, expenses or compensation to be paid out of the assets of CIC under Insurance Code sections 1010 et seq. or any other provisions of the Insurance Code or applicable law.

(a) If there are any unpaid outstanding invoices for expenses described in Section 8.2 hereof, such invoices shall be paid at Closing. CIC and its successors-in-interest shall pay any additional invoices tendered after Closing and arising out of the Conservation (including the pre-conservation costs of preparing to take possession of and conserving CIC, and all costs and expenses, including attorneys' fees, incurred by the Conservator and the CDI in bringing and prosecuting the conservation proceeding and order, and incurred with regard to or in relation to the Rehabilitation Agreement and Rehabilitation Order, including but not limited to, the costs of or associated with the Independent Consultant as defined in Schedule 2.6, and otherwise dealing with the business, conduct, and property of CIC under the provisions of Insurance Code sections 1010 et seq.).

(b) In the interest of expediting performance of this Rehabilitation Agreement, the Conservator may commence the process of retaining the Independent Consultant and associated experts provided for in Schedule 2.6, and may commence their work, prior to approval by the Court of the Rehabilitation Order.

Section 8.3. Indemnification by Menzies and CIC with Respect to Third-Party Claims. Menzies and CIC shall hold the Conservator harmless against, and pay, any and all claims made by third parties, as such claims are suffered, sustained, incurred or required to be paid by the Conservator resulting from the breach of any representation, warranty, covenant or agreement of Menzies contained in or made pursuant to this Plan.

Section 8.4. Entire Plan. This Plan and the other Transaction Documents (including the exhibits and schedules attached hereto and thereto) supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Persons affected by this Plan. There are no representations, promises, warranties, covenants or undertakings, other than those expressly set forth or referred to in this Plan, and the other Transaction Documents.

Section 8.5. Amendment. This Plan may be amended only by the Conservator with leave

of Court upon a showing of good cause.

Section 8.6. No Assignment. None of the rights or obligations under this Plan or the other Transaction Documents may be assigned or transferred to or assumed by any other person, except as expressly provided herein.

Section 8.7. Governing Law. This Plan shall be governed and construed in accordance with the Laws of the State of California, including the Insurance Code, applicable to agreements made and to be performed entirely within the State of California, without giving effect to the principles of conflicts of law thereof, and jurisdiction and venue for any action arising under this Plan shall be in the San Mateo Superior Court.

Section 8.8. Headings: Gender and Person. All section headings contained in this Plan are for convenience of reference only, do not form a part of this Plan and shall not affect in any way the meaning or interpretation of this Plan. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 8.9. Notices. Any notice, request, demand, waiver, consent, approval or other communication required or permitted to be made hereunder shall be in writing and shall be deemed given only if delivered by hand, or mailed by certified or registered mail with postage prepaid and return receipt requested, or sent by facsimile transmission, as follows:

(a) If to the Commissioner, the Conservator or CIC, to:

California Insurance Company in Conservation
c/o Conservation & Liquidation Office
100 Pine Street, 12th Floor San
Francisco, CA 94111
Attention: Joe Holloway, CEO

with concurrent copies to:

California Department of Insurance
1901 Harrison Street, 6th Floor
Oakland, CA 94612
Attention: Kenneth B. Schnoll, Esq.

and to:

Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 300
Sacramento, CA 95814-4407
Attention: Cynthia Larson, Esq.

(b) If to Menzies, to:

6515 North 159 Street
Omaha, NE 68116

with concurrent copies to:

DLA Piper, LLP
555 Mission Street, Suite 2400
San Francisco, CA 94105
Attention: Shand S. Stephens, Esq.

(c) If to AUI, to:

10805 Old Mill Road
Omaha, NE 68154
Attention: Alan Quasha

with concurrent copies to:

DLA Piper, LLP
555 Mission Street, Suite 2400
San Francisco, CA 94105
Attention: Shand S. Stephens, Esq.

(d) If to AUCRA, to:

10805 Old Mill Road
Omaha, Nebraska 68154
Attention: Jeffrey A. Silver

with concurrent copies to:

DLA Piper, LLP
555 Mission Street, Suite 2400
San Francisco, California 94105
Attention: Shand S. Stephens, Esq.

(e) If to Reinsurer, to:

with concurrent copies to:

or to such other address as may be designated by a party by written notice to the other parties. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, sent by facsimile (with confirmation of receipt) or mailed.

Section 8.10. Severability. If any provision of this Plan is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of the provisions of this Plan shall remain in full force and effect.

Section 8.11. Non-Liability of the Conservator and Commissioner. The Commissioner, acting in his capacity as Conservator of CIC or in any other official capacity, shall have no liability whatsoever, in any capacity, for any acts or omissions arising out of or related to this Plan, or to the conservation of CIC, or to alleged acts or omissions during the conservation of CIC. In addition, the Commissioner, acting in his capacity as Conservator or in any other capacity, shall have no obligation or liability whatsoever, in any capacity, to indemnify Cedants, Menzies or the Reinsurer, or any officer, director, employee or agent thereof, for any claims, actions, demands, suits, losses, liabilities, expenses or costs (including attorneys' fees) asserted against any of them, or their officers, directors, employees or agents, including but not limited to those arising out of or related to this Plan, or to the conservation of CIC, or to alleged acts or omissions during the conservation of CIC. The State of California is not a party to this Plan and shall have no liability with respect to this Plan or the conservation of CIC, or any acts or omissions during the conservation of CIC.

IN WITNESS WHEREOF, the Conservator executes and adopts this Plan by and on behalf of CIC, as of the day and year first above written.

RICARDO LARA, Insurance Commissioner, in his capacity as Conservator of California Insurance Company and not in his individual capacity

By: Joe Holloway
Joseph B. Holloway
Deputy Conservator

SCHEDULE 2.6

TERMS FOR SETTLING PENDING AND SUBSEQUENT LITIGATION

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I. DEFINITIONS

The following definitions are for use solely in this Schedule 2.6 and Section 2.6 of the Rehabilitation Plan that references it. For purposes of this Schedule 2.6 and Section 2.6, to the extent the definitions below may differ from those in the Rehabilitation Plan, the Definitions in this Schedule 2.6 control.

1. "Affiliate" means any corporation or other business that owns, is owned by, or shares common or substantially common ownership or management with the Company, including, but not limited to, Applied Underwriters, Inc.; Applied Underwriters Captive Risk Assurance Co., Inc.; Applied Risk Services, Inc.; Applied Risk Services, Inc. of New York; Continental Insurance Company; Continental National Indemnity; Pennsylvania Insurance Company; and North American Casualty Company.

2. "Cal Retro Plan" means the California Retrospective Rating Plan published by the WCIRB.

3. "CIC Guaranteed-Cost Premium" means the premiums set pursuant to the filed rates for the Company's Guaranteed Cost Policy over the term of the Policy, calculated as the Policyholder's manual rates applied to the payroll of each classification, adjusted for schedule credits and debits and the Policyholder's experience modification factor, waivers of subrogation, and any premium for employer liability increased limits. Insofar as the approved rate includes premium taxes and assessments, they are included in CIC Guaranteed-Cost Premium.

4. "Claimant" means a Party to Pending Litigation or Subsequent Litigation who is asserting or may assert an interest in that Proceeding contrary to the interest of the Company, its Affiliates, or its Successors.

5. "Claims-Handling Expert" means a Qualified Expert retained by the Independent Consultant.

6. "Closed Out" means a Policy for which Policyholder has no future liability to the Company, including to its Affiliates. Obligations related to coverage for employees under a Closed Out Policy remains in effect.

7. "Company" means the California Insurance Company, in conservation pursuant to November 4, 2019, order of the Superior Court of San Mateo County.

8. "Conservation Court" means the San Mateo County Superior Court.

9. "Conservation Date" means November 4, 2019.

10. "Conservator" means the Deputy Insurance Commissioner and Deputy Conservator of the Company pursuant to the Order of Conservation.

11. "Days" means calendar days.

12. "Election" means a Claimant's choice to exercise one of the options specified in Article II, below, or a Claimant's failure to timely exercise one of the options specified therein.

13. "IBNR Reserves" means reserves for claims incurred but not reported.

14. "Incurred Losses," as used in this Schedule 2.6, means the sum of claim payments, case reserves on reported claims, allocated loss adjustment expenses, and IBNR Reserves.

15. "Independent Consultant" is the person or firm designated to perform the duties specified below.

16. "Order of Conservation" means the "Order Appointing Insurance Commissioner as Conservator and Restraining Order" issued and filed by the Conservation Court on the Conservation Date.

17. "Overpayment" and "Overpaid" refer to payment, reserving, or both on a workers' compensation claim where the sum of the amount paid and the amount reserved exceeds the amount that should be paid or reserved, or has been paid or reserved, in accordance with California law and accepted claims-adjustment practices.

18. "Party" means a plaintiff, petitioner, appellant (including, but not limited to, appellants before the Administrative Hearing Bureau of the California Department of Insurance), defendant, respondent, appellee, intervenor, or real party in interest.

19. "Pending Litigation" means a Proceeding pending on the Conservation Date.

20. "Person" means any natural person or group of natural persons, association, organization, business trust, partnership, limited liability company, or corporation, or any affiliate thereof.

21. "Policy" means a workers' compensation insurance policy written to cover, in whole or in part, employees in California, Connecticut and New York and issued on or before June 28, 2018.

22. "Policyholder" means (a) any Person that is named as an insured under a Policy or (b) any Person other than the Company or an Affiliate who is named as a party to an RPA in connection with a Policy.

23. "Proceeding" means a matter brought in any state or federal court, before the Commissioner, or in an arbitration, in which a Claimant is a Party and is asserting a claim against, or defending against a claim by, the Company, its Affiliate, or a Successor regarding a Policy or RPA. For purposes of this Schedule 2.6, an action on a promissory note or other document brought in whole or in part to collect money that the Company, its Affiliate, or a Successor claims to be due, or to have been due, in whole or in part, under a Policy or an RPA is deemed to be "regarding a Policy or an RPA."

24. "Pure Premium Rate" means the approved fixed-cost pure premium rate filing published by the WCIRB on the effective date of the policy.

25. "Qualified Expert" means a person who possesses special knowledge, skill, experience, training, or education sufficient to qualify them under Evidence Code section 720 as an expert in the field for which they have been selected to provide expert services under the terms of this Schedule.

26. "Redundant" refers to a case reserve that has been set at an amount greater than a reasonable actuarial estimate of the amount necessary to pay the ultimate settlement value of a workers' compensation claim.

27. "Rehabilitation Order" has the meaning assigned to it in the Conservator's Rehabilitation Plan for CIC.

28. "Reserves Expert" means an actuary who is a Fellow of the Casualty Actuarial Society retained by the Independent Consultant.

29. "Restitution Amount" means the Option 1 Restitution Amount, Option 2 Restitution Amount, or Option 3 Restitution Amount, as prescribed in Articles III, IV, and V, respectively, and as adjusted pursuant to the provisions of Article VII. The Restitution Amount may be negative where it is determined that the Claimant has a net liability to the Company pursuant to Article III, Section 4, Article IV, Section 6, or Article V, Section 5.

30. "RPA" means a Reinsurance Participation Agreement issued by an Affiliate in

connection with a Policy covering California employees.

31. "Settlement Offer" means the written offer specified in Article II, below.

32. "Subsequent Litigation" is a Proceeding brought after the Conservation Date by the Company, its Affiliate, or a Successor or a claim asserted by a Policyholder deemed eligible to be a Claimant pursuant to Article 8, Section 2 of this Schedule.

33. "Successor" means an assignee or other successor in interest of a promissory note or other evidence of indebtedness or obligation of a Policyholder where the indebtedness or obligation arises or arose in connection with an RPA.

34. "Total Payments" means the sum of all payments made by or on behalf of a Claimant and its affiliates for workers' compensation coverage, whether denominated premiums, collateral, fees, deposits, assessments, premium taxes, commissions, adjustments, or other terms, for or in connection with a Policy or an RPA. "Total Payments" shall not include any payments by Claimant and its affiliates for payroll processing services. "Total Payments" shall not include any payments for "Stop Gap" insurance.

35. "WCIRB" means the Workers' Compensation Insurance Rating Bureau of California.

II. POLICYHOLDERS' OPTIONS TO SETTLE LITIGATION

1. Every Claimant will be offered an opportunity to make an Election to settle any Pending Litigation or Subsequent Litigation to which it is a Party. Election shall be made by exercising in writing and submitting to the Conservator a notice of election to settle under "Option 1," "Option 2," or "Option 3," as defined in Article III, Article IV, and Article V, respectively. These options are available exclusively to a Claimant Party to Pending Litigation or to Claimants in Subsequent Litigation. The Company is not expected or required to offer these options to any other Person. The availability of these options shall not be construed as an admission of liability, and it is the intent of the Conservator that neither the existence of the options nor the acceptance of any option by particular Claimants shall be admissible for any purpose against the Company or its Affiliates.

2. A Claimant may, either by express declination of the written offer or by failing to act within the prescribed time, decline to settle under any of the options specified here, in which case that Claimant remains at liberty to pursue against the Company, its Affiliate, or their successor in interest its claims after the termination of the conservation, or such earlier date that the Conservator may specify.

3. Except as otherwise specified in this paragraph, upon election of Option 1, Option 2, or Option 3, the Policy that is the subject of the Pending Litigation or Subsequent Litigation will be Closed Out. Nothing herein shall be deemed to affect the obligations of the Company or the Reinsurer owed to any injured employee, or otherwise related to coverage, under a Policy.

III. OPTION 1

1. Option 1 is available to any Claimant who purchased a Guaranteed Cost Policy from the Company under its EquityComp or SolutionOne programs and who also executed an RPA.

2. The Claimant that elects Option 1 will be entitled to its "Option 1 Restitution Amount," calculated as follows:

    a. The Total Payments;

    b. Minus the CIC Guaranteed-Cost Premium, using the audited payroll and rates set forth in the Policy;

    c. Minus related Continental National Indemnity Company Guaranteed-Cost Premium, using audited payroll and rates set forth in the policy.

3. If the result of the calculation prescribed in Section 2 of this Article is positive, the Company shall pay, or cause to be paid, to the Claimant the Option 1 Restitution Amount.

4. If the result of the calculation prescribed in Section 2 is negative, the Company may collect that amount, converted to a positive number. In no case may the sum of the Total Payments prior to the collection authorized in this Section plus the collection authorized in this Section exceed the CIC Guaranteed Cost Premium.

5. Claimant shall not be liable for, and neither the Company, its Affiliates, nor a Successor shall seek to collect, any amounts in excess of the collection authorized in Section 4.

6. Whether or not the Claimant executed an RPA, the Claimant electing Option 1 will not be liable for, and neither the Company, its Affiliates, nor a Successor will be entitled to collect, any charges under the RPA.

IV. OPTION 2

1. Option 2 is available to any Claimant who purchased a Guaranteed Cost Policy from the Company under its EquityComp or SolutionOne programs and who also executed an RPA.

2. The Claimant that elects Option 2 will be entitled to its Option 2 Restitution Amount, calculated as Total Payments minus the Retrospective Premium that would have been operative at the time of the Policy's inception:

    a. The Retrospective Premium is calculated as the sum of the Cal Retro Plan California Standard Premium and the Non-California Standard Premium, multiplied by the sum of the Expense Ratio and the Insurance Charge, that quantity added to Incurred Losses and Incurred Allocated Loss Adjustment

Expenses, subject to a Minimum and Maximum Cost.

b. The California Standard Premium is defined as:

   i. The actual payroll by class code;

   ii. Multiplied by the rate per $100 for that class code, as specified in the filed and approved WCIRB pure premium rates operative at the time of the Policy's inception;

   iii. Multiplied by the Experience Modification Rating (Xmod) for the Policy operative at the time of the Policy's inception;

   iv. Multiplied by 1.15;

   v. Summed across all class codes for all Policies. If the Claimant has more than one RPA, each RPA is calculated separately. If the Claimant had an extension from one agreement, the original and extension years are calculated together.

c. The Non-California Standard Premium is defined as the workers' compensation insurance premium for risks with exposures outside California, determined on the basis of the insurer's authorized rates, by classification and by state, any applicable experience modifications, and any other authorized premium charge applicable, excluding premium discount.

d. The Expense Ratio is taken from the WCIRB's Quarterly Experience Report as of December 31, 2019, calculated by subtracting the page 5 accident year loss and ALAE ratio from the page 6 combined ratio averaged by weighting on the Standard Premium average of each policy's expense ratio.

e. The Insurance Charge is taken from the WCIRB Table ML in effect at the inception of the first Policy,

   i. using the Ultimate Loss Group column determined from Section 1 of Schedule 1 of the RPA (intended to reflect expected losses during the three-year term of the RPA) and

   ii. The Entry ratio determined by

   (1) dividing the Maximum Loss and ALAE Ratio, taken from Section 2 of Schedule 1 of the RPA (referred to therein as "Cumulative Aggregate Limit")

   (2) by the Expected Loss and ALAE Ratio, calculated by dividing the CIC Permissible Loss and LAE Ratio, taken from CIC's filed and approved Workers' Compensation Insurance – Rate Filing Form for the relevant period, by 1.1 to take into account unallocated loss adjustment

expenses (ULAE).

(3) For policies with a Minimum Loss and ALAE Ratio in addition to a Maximum Loss and ALAE Ratio, a corresponding calculation shall be made to reflect the expected portion of losses below the Minimum, which will be subtracted from the provision for losses above the Maximum in the calculation of the net Insurance Charge.

f. Case Incurred losses and Incurred ALAE are determined by summing the Total Incurred column from the most recent Analysis of Ultimate Claims Costs section of the Plan Analysis.

3. For purposes of the calculation prescribed in Section 2 of this Article, "Actual Losses" means Paid Losses plus Case Reserves plus IBNR Reserves, as follows.

a. "Paid Losses" means amounts recorded paid on and attributable to claims under the Claimant's Policy, including amounts paid under an RPA, subject to the provisions of Article VII.

b. "Case Reserves" means any reserves maintained by the Company for losses or loss adjustment expenses attributable to the Claimant's claims at issue in the Pending Litigation, subject to the provisions of Article VII, Section 1.

c. IBNR Reserves shall be calculated from CIC's 2009 through 2018 Annual Statements, Schedule P, Part 1, for direct and assumed loss payments (column 4), direct and assumed defense and cost-containment expenses (DCC) (column 6), direct and assumed losses unpaid – case basis (column 13), and direct and assumed DCC unpaid (column 17), as follows:

i. The direct and assumed loss and DCC case incurred for each accident year 2009 through 2018 is calculated by summing the data taken from the four columns specified in the preceding paragraph c, above, which will represent the diagonals of the direct and assumed loss and DCC case incurred data triangle, with the 2018 Annual Statement data being the bottom-most diagonal.

ii. Age-to-age loss and defense and cost-containment expenses (DCC) loss development factors for each accident year are derived by dividing the case incurred figure calculated as specified in subparagraph i of this paragraph c, above, for a given accident year at a given maturity by its equivalent at the prior maturity, producing-averages of the age-to-age factors by maturity upon which the development pattern up to 120 months are determined.

iii. The ultimate tail factor at 120 months is calculated from the 2018 Annual Statement, Schedule P, Part 1, as the average, for accident years 2009, 2010, and 2011, of 1 plus

(1) the sum of the direct and assumed losses unpaid – bulk and IBNR (column 15) and the direct and assumed DCC unpaid – bulk and IBNR (column 19)

(2) divided by the corresponding case incurred loss and DCC figure at the bottom of the corresponding data triangles.

(3) The calculated tail factor for accident year 2010 is adjusted to 120 months by dividing by the selected 108-120 month age-to-age development factor.

(4) The calculated tail factor for accident year 2011 is adjusted to 120 months by dividing by the selected 108-120 month and 96-108 month age-to-age development factors.

iv. The final age-to-ultimate development factors are determined by multiplying the various age-to-age factors from subparagraph ii of this paragraph c by the selected 120-month ultimate tail factor from subparagraph iii of this paragraph c.

v. The specific age-to-ultimate factor for a given policyholder will be the factor from subparagraph iv of this paragraph c, above, which corresponds to the midpoint between the given policy effective and expiry dates.

vi. The IBNR provision prior to discount, as specified below in subparagraph vii of this paragraph c, will equal the specific age-to-ultimate development factor minus 1.0, multiplied by the sum of the policyholder's paid losses and case reserves.

vii. The IBNR provision shall be discounted to reflect an investment yield of 2.7% per year, which reflects the returns realized by CIC and property- casualty insurers for 2010 through 2019, by multiplying the IBNR provision prior to discount in subparagraph vi of this paragraph c, above, by 0.9, which reflects the 2.7% annual investment yield applied to loss payment patterns.

d. Paid losses and reserves shall be determined as of the June 30 or December 31 closest to and prior to the date when the final version of the templates are made public pursuant to Article VI, Section 1.

4. If the result of the calculation prescribed in Section 2 of this Article is positive, the Company shall pay, or cause to be paid, to the Claimant the Option 2 Restitution Amount.

5. If the result of the calculation prescribed in Section 2 of this Article is negative, the Company may collect that amount, converted to a positive number, but in no case may the sum of the Total Payments prior to the collection authorized in this Article plus the collection authorized in this Section exceed the result of the calculation prescribed in Section 2.a through 2.b.v of this Article.

6. If there is a dispute regarding how the Cal Retro Plan is properly applied to the Claimant's Policy, that dispute shall be resolved by the Independent Consultant, whose determination will be final and non-reviewable.

V. OPTION 3

1. Option 3 is available to any Claimant who purchased a Guaranteed Cost Policy from the Company under its EquityComp or SolutionOne programs and who also executed an RPA.

2. The Claimant that elects Option 3 will be entitled to its "Option 3 Restitution Amount," calculated as follows:

    a. The Total Payments;

    b. Minus the "Final Cost" as prescribed in the "Scenario Worksheet" for Cumulative 3-Year Program Amounts on the Claimant's "Workers' Compensation Program Summary & Scenarios". Locate the equivalent "Ultimate Claims Cost" for Claimant's Actual Loss Ratio by dividing the Estimated LPCA by the Actual LPCA and multiplying that by the Actual Losses. Use the result to interpolate the Worksheet's equivalent "Ultimate Claims Cost" to determine the "Final Cost." Adjust that result for the Claimant's change in Actual LPCA over Estimated LPCA as well as the period of the Claimant's actual Active Term if other than 36 months.

3. For purposes of the calculation prescribed in Section 2 of this Article:

    a. Any case reserves maintained by the Company on the Conservation Date and attributable to the Claimant's claims at issue in the Pending Litigation shall be treated as losses, subject to the provisions of Article VII;

    b. IBNR Reserves, computed as for Option 2, shall be treated as losses, subject to the provisions of Article VII;

    c. Recorded paid losses shall be treated as losses, subject to the provisions of Article VII; and

    d. Paid losses and reserves shall be determined as of the June 30 or December 31 closest to and prior to the date when the final version of the templates are made public pursuant to Article VI, Section 1.

4. If the result of the calculation prescribed in Section 2 of this Article is positive, the Company shall pay, or cause to be paid to the Claimant, the Option 3 Restitution

Amount.

5. If the result of the calculation prescribed in Section 2 of this Article is negative, the Company may collect that amount, converted to a positive number, but in no case may the sum of the Total Payments prior to the collection authorized in this Section plus the collection authorized in this Section exceed the result of the calculation prescribed in Sections 2 and 3 of this Article.

6. If there is a dispute regarding how the RPA is properly applied to the Claimant's Policy, that dispute shall be resolved by the Independent Consultant, whose determination will be final and non-reviewable.

VI. PROCEDURE FOR SETTLEMENT OFFERS AND ELECTIONS

1. The Independent Consultant shall adopt templates prescribing how the Option 1, Option 2, and Option 3 Refund Amounts will be calculated. The templates shall prescribe each data element of the calculation and the formulas for combining the data elements into refund amounts. The Independent Consultant shall commence work on these templates upon appointment. Adoption of the templates shall be as follows:

   a. Not later than 30 days after commencing its duties, the Independent Consultant shall make public draft templates prescribing how the Option 2 Refund Amount and the Option 3 Refund Amount will be calculated;

   b. Not later than 15 days after the draft templates are made public, any person may offer comments on the draft templates; and

   c. Not later than 60 after commencing its duties, the Independent Consultant shall make public the final versions of the templates. The Independent Consultant may, with the approval of the Conservator, extend this 60-day period. The Independent Consultant's determination of the templates shall be final.

2. Beginning not more than 10 days after the final versions of the templates are made public, and completing no more than 30 days after the final versions of the templates are made public, the Company shall submit to the Independent Consultant a data file for each Pending Litigation and Subsequent Litigation matter, specifying the values prescribed by the templates. The values the Company submits for case reserves and paid losses shall be the values on the Company's books as of the June 30 or December 31 closest to and prior to the date when the final version of the templates are made public pursuant to Article VI, Section 1, which the Company may not dispute in a review conducted pursuant to Article VII.

3. Simultaneous with submission of the data file prescribed in Section 2 of this Article, the Company shall provide a copy of the data file to each Claimant and its counsel in the Pending Litigation or Subsequent Litigation matter. Each Claimant may, within 15 days of receipt of the data file, dispute the data contained in the file. Any such dispute shall be

in writing, may include supporting evidence, and shall be simultaneously provided to the Company. At this stage, loss reserves and paid claims may not be challenged as they are subject to separate challenge under Article VII. Other values (e.g., premium and other amounts paid, payroll, experience modification factors, and schedule credits and debits) may be challenged in the dispute provided for in this Section. The Company, acting through its pre-conservation management, may, within 15 days of receipt of the dispute, submit a written answer to the Independent Consultant, with a simultaneous copy to the Claimant. The Independent Consultant may request from the Company, and the Company, acting through its pre-conservation management, shall provide any information necessary to resolve such a dispute. The Independent Consultant shall set forth in the settlement offer prescribed in Section 4 of this Article its determination of each disputed item, and the Independent Consultant's determination of such disputes shall be final.

4. Within 30 days of latest submission prescribed in Section 2 or permitted in Section 3 of this Article, the Independent Consultant shall submit to the Conservator, a written Settlement Offer to each Claimant, which the Conservator shall promptly tender to each Claimant. The Settlement Offer shall explain the Claimant's Election options, including the option not to settle Pending Litigation or Subsequent Litigation, and shall include the Independent Consultant's calculation of the Claimant's prospective restitution from, or liability to, the Company under Option 1, Option 2, and Option 3. The Settlement Offer shall also explain the Claimant's rights to obtain a Request for Claim Information and Review of Incurred Losses pursuant to Article VII. The Settlement Offer shall also explain to the Claimant that, if either party fails to make payment as specified in this Schedule 2.6, its sole and exclusive remedy is to seek enforcement of the Rehabilitation Order and the transactions entered into thereunder in the Conservation Court.

5. Each Settlement Offer under Option 1, Option 2, and Option 3 shall provide for the payment of interest as follows:

    a. If the Restitution Amount is positive, CIC shall pay interest to the Claimant, over the period from the dollar-average date of Total Payments made to the date the Restitution Amount is paid, which shall be designated in the offer, at 2.7%, compounded annually.

    b. If the Restitution Amount is negative, CIC shall collect interest from the Claimant, over the period from the dollar-average date of Total Payments due to the date the Restitution Amount is paid, which shall be designated in the offer, at 2.7%, compounded annually.

6. The Settlement Offer shall specify a date, not later than 30 days after the date of the Settlement Offer, by which the Claimant to whom it is addressed may make the Election. If the Claimant has requested a Review of Incurred Losses, the period for Election shall be extended as specified in Article VII, Section 4. Failure to make a timely Election shall be deemed declination of the Settlement Offer. A Claimant may request, and the Conservator may, in his discretion, grant a reasonable extension of the period for the Claimant to make the Election.

7. The Company shall, within 30 days of the Election, pay, or cause to be paid, the amount to which the Claimant is entitled. If the Company is entitled to receive payment from the Claimant under the Election, the Claimant shall make that payment within 30 days of the Election or such further date as the Conservator may permit. The Conservator may, upon a showing of hardship, prescribe such additional period, not to exceed 120 days, for a Claimant to make the payment prescribed in this Section. If the Company fails to make payment as specified in this Schedule 2.6, Claimant's sole and exclusive remedy is to seek enforcement of the Rehabilitation Order and the transactions entered into thereunder in the Conservation Court.

8. In making an Election, the Claimant shall irrevocably submit to the jurisdiction of the San Mateo Court in the Conservation Proceeding.

VII. REVIEW OF INCURRED LOSSES

1. Request for Claim Information

a. Any Party who is a Claimant in Pending Litigation or Subsequent Litigation and contends that payments or case reserves are Redundant may make a written Request for Claim Information.

i. The Request for Claim Information shall be made to the Company, with a copy to the Independent Consultant.

ii. The Request for Claim Information shall specify the claim number or, if the Claimant cannot provide the claim number, sufficient other information necessary to identify the claim.

iii. The Request for Claim Information may be made at any time after the Rehabilitation Plan's Effective Date and shall be made no later than 14 days after receipt of the Settlement Offer prescribed in Article VI. The Independent Consultant, with the approval of the Conservator, may extend the foregoing deadlines in this paragraph for good cause.

b. In response to a Request for Claim Information, the Company shall provide to the requesting Claimant at the Company's expense a loss run, a complete copy of the claim file, and, to the extent not included in the claim file, a copy of every email, memo, or other document pertaining to the setting of reserves for each requested claim.

c. The requested information shall be provided to the Claimant within 30 days of the date the Request for Claim Information was transmitted to the Company. If more than three claims are specified in the Request for Claim Information, the Independent Consultant may grant the Company additional time to provide the

information.

d. A Claimant need not make a Request for Claim Information to be entitled to make a Request for Review of Incurred Losses.

2. Request for Review of Incurred Losses

a. Any Party who is a Claimant in Pending Litigation or Subsequent Litigation and contends that any claim was Overpaid case or that case reserves on a claim are Redundant as of the June 30 or December 31 closest to and prior to the date when the final version of the templates are made public pursuant to Article VI, Section 1, may make a written Request for Review of Incurred Losses.

b. The Request for Review of Incurred Losses shall be made to the Independent Consultant, with a copy to the Company.

c. The Request for Review of Incurred Losses shall be made no later than 14 days after receipt of the Settlement Offer prescribed in Article VI or, if a Request for Claim Information is made, within 30 days of receipt of the complete response to the Request for Claim Information. Multiple Requests for Review of Incurred Losses may be made for different claims, provided that each request is made within 30 days of receipt of the complete response to the Request for Claim Information pertaining to that claim. For good cause, the Independent Consultant may grant the Claimant additional time to make a Request for Review of Incurred Losses.

d. The Request for Review of Incurred Losses shall specify the claim number or, if the Claimant cannot provide the claim number, sufficient alternative information necessary to identify each claim to which the request pertains.

e. The Request for Review of Incurred Losses shall specify whether the request is for a review of case reserves, of claim payments, or both.

f. The Request for Review of Incurred Losses may, but is not required to, contain argument why the Claimant contends the case reserves are Overstated or the reserves are materially Redundant, and may, but is not required to, be accompanied by a statement of opinion by a Qualified Expert retained by and at the expense of the Claimant.

3. Review of Incurred Losses

a. Where the Request for Review of Incurred Losses alleges that a claim was Overpaid, the review shall be limited to reviewing the claim files for instances of failure to comply with the following claim-handling standards, based on evidence in the claim file and reasonable inferences from that evidence:

i. Amount paid or settlement not supported by the injury documented in the

claim file or is otherwise unreasonable;

ii. Inadequate inquiry into whether the claim arose out of and in the course and scope of employment in accordance with Labor Code section 3600 et seq.;

iii. Impairment rating that is not supported by admissible evidence;

iv. Authorization of treatment that is inconsistent with Medical Treatment Utilization Schedule unless adequately rebutted by credible medical evidence;

v. Failure to pursue apportionment;

vi. Failure to pursue evidence of a fraudulent claim; or

vii. Failure to pursue subrogation.

b. The Independent Consultant shall retain the services of such Qualified Experts as are necessary to determine whether the claim was Overpaid or the case reserves are Redundant.

c. When determining whether claims were Overpaid or case reserves are Redundant, the Independent Consultant may take into consideration any expert opinions that have been submitted, including those of the retained Qualified Experts, those submitted by the Company, and those submitted by the Claimant, but the determination shall reflect the independent judgment of the Independent Consultant. The payments made and reserves set by the Company shall be given no more or less weight than any other expert opinion.

d. Within 30 days of receipt of a Request for Review of Incurred Losses, the Independent Consultant shall issue a written decision determining, as to each claim, whether the claim was Overpaid and whether the case reserves are Redundant. If the Independent Consultant determines either that the claim was Overpaid or case reserves are Redundant, the Independent Consultant shall determine the amounts by which the claim was Overpaid or the reserves are Redundant and shall revise the Option 2 Restitution Amount and the Option 3 Restitution Amount accordingly. The Independent Consultant's determination of the Review of Incurred Losses and of the Restitution Amounts shall be final.

4. Revised Settlement Offer

a. If a Claimant makes a timely Request for Review of Case Reserves or Request for Review of Claims Files pursuant to this Article, the time for Claimant to make an Election shall be tolled during the period of the requested review or reviews.

b. Upon issuance of the Independent Consultant's decision and determination of revised Restitution Amounts, if any, pursuant to Section 3.d of this Article, the Independent Consultant shall tender to Claimant a revised Settlement Offer giving written notice of the Restitution Amounts as they may have been revised. If the

review of Incurred Losses results in any change in paid losses or reserves, the remaining components of Incurred Losses shall be adjusted accordingly. If the review of Incurred Losses results in any change in the Restitution Amount, the adjusted amount shall also reflect any reduction of other expenses, such as premium taxes and assessments, that are calculated as a percentage of premium.

c. A revised Settlement Offer shall give Claimant 30 days to make an Election. A Claimant may request, and the Conservator may, in his discretion, grant a reasonable extension of the period for the Claimant to make the Election.

VIII. PROCEDURE FOR SUBSEQUENT LITIGATION

1. No later than 60 days after the Rehabilitation Plan's Effective Date, the Company shall provide the Conservator a Schedule of Subsequent Litigation and Potential Subsequent Litigation listing the policies on which it, an Affiliate, or a Successor has asserted, or may believe it has a right to assert, the right to bring Subsequent Litigation. The schedule shall identify the policyholder and the identities of the obligee and obligor. The schedule shall state the following as to each policy: policy dates; the amounts and dates paid as premiums, collateral, or other payments; the amount the Company, its Affiliate, or a Successor claims is due and to whom; and the dates on which demands may have been made for payment and the amounts demanded.

2. Any potential Claimant who is not presently a Party to Pending Litigation may file a Notice of Claim with the Conservator within 60 days of the publication of the Notice provided for in Rehabilitation Plan, Section 3.1. The Conservator shall confirm that the Policyholder was Party to an RPA that had not been Closed Out as of the Conservation Date. Upon the Conservator's determination, the Conservator shall give notice to the Policyholder and CIC that the Policyholder shall be treated as a Claimant and eligible for Subsequent Litigation under this Schedule 2.6.

3. No Subsequent Litigation may be initiated if it has not been identified in the Schedule of Subsequent Litigation and Potential Subsequent Litigation or been designated as eligible for Subsequent Litigation pursuant to Section 2 of this Article.

4. Any Subsequent Litigation, other than that described in Section 2 of this Article, must be initiated no later than 45 days after the Schedule of Subsequent Litigation has been tendered to the Conservator. Thereafter, all rights of the Company, its Affiliates, and any Successors under such policies shall be extinguished, except in the form of a counterclaim the Company, its Affiliate, or a Successor may have in litigation initiated by an adverse party.

5. In any Subsequent Litigation, the Claimant shall be entitled to the election of options provided in Articles II through V, including the review of case reserves and claim payments provided in Article VII.

IX. ADDITIONAL TERMS

1. The Conservator shall, after consultation with the Company's pre-conservation management, and any other persons he deems appropriate, appoint the Independent Consultant, who shall commence the duties prescribed under this Schedule 2.6 within 60 days of the Rehabilitation Plan's Effective Date.

2. The Independent Consultant shall have the following qualifications:

    a. He or she shall have expertise in the following fields:

        i. Actuarial science as applied to workers' compensation retrospective rating programs; and

        ii. Financial management of a workers' compensation retrospective rating program.

    b. He or she shall be familiar with insurance-industry accounting rules and practices as they apply to the workers' compensation line of business.

    c. He or she shall be familiar, or able to obtain timely familiarity, with information systems maintained by CIC and containing data required to perform the duties of the Independent Consultant. This expertise may be established by having an identified expert on such systems to whom the Independent Consultant would have demonstrated availability.

    d. He or she shall, as a part of a firm or firms with which he or she is associated, or by demonstrated availability on a contract basis, have available persons (i) qualified to serve as the Claims Handling Expert and (ii) qualified to serve as the Reserves Expert.

    e. "Demonstrated availability," as used in this Article, may be established by affirmative representations by the person confirming his or her availability and willingness to perform the duties specified.

3. The Independent Consultant shall appoint the Reserves Expert, who shall be a Qualified Expert in setting reserves for workers' compensation claims, and the Claims-Handling Expert, who shall be a Qualified Expert in adjusting workers' compensation claims.

4. The Independent Consultant and every person he or she may appoint or retain to provide services under this Schedule 2.6 shall be a disinterested person satisfying the following criteria.

    a. Neither he or she, nor any firm in which he or she has an employment position or an ownership interest, shall have provided any services to the Company or an Affiliate in the five years preceding his or her appointment pursuant to this Article. He or she shall agree, as a condition of appointment, not to accept any employment and not to contract for professional services with the Company or an

Affiliate for three years following completion of his or her services under this Schedule 2.6.

b. Neither he or she, nor any firm in which he or she has an employment position or ownership interest, shall have provided any services to any Claimant, or any person who has provided professional services to a Claimant, in the five years preceding his or her appointment pursuant to this Article. He or she shall agree, as a condition of appointment, not to accept any employment and not to agree to contract for professional services with any Claimant, or any person who has provided legal services to a Claimant, for three years following completion of his or her services under this Schedule 2.6.

5. Neither the Company nor the Claimant may have any substantive ex parte communications with the Independent Consultant or any person appointed by him to provide services under this Schedule 2.6. Written communications shall reflect that the opposing party (Company or Claimant) received a timely copy of the communication. Oral communications shall be memorialized by an email to the other party, with copy to the Independent Consultant or his or her appointee, summarizing the full substance of the communication. An adverse party shall be afforded timely opportunity to respond to the substance of such a written or oral communication.

6. The Company and a Claimant may, with the approval of the Independent Consultant, agree to vary the calculations prescribed in Articles III, IV, or V.

7. All costs of the Independent Consultant, the Reserves Expert, and the Claims-Handling Expert shall be paid by the Company until such time as the Company is redomesticated. Thereafter, any such costs shall be paid by the Reinsurer selected pursuant to the Rehabilitation Plan.

8. The Company and any Affiliate or Successor that is a Party or asserts a right against the Claimant arising out of a Policy or RPA will execute a waiver and full release of liability of any Claimant who exercises Option 1, Option 2, or Option 3. The Company and its officers will take all steps necessary to secure the cooperation of any and all Affiliates and Successors from which cooperation may be required for Pending Litigation or Subsequent Litigation to be settled according to the terms of the Rehabilitation Plan and this Schedule 2.6.

Exhibit A

To the California Insurance Company Rehabilitation Plan

ASSUMPTION REINSURANCE AND ADMINISTRATION AGREEMENT

THIS ASSUMPTION REINSURANCE AND ADMINISTRATION AGREEMENT (this "Agreement"), dated as of [_____], 202___, is made by and among CALIFORNIA INSURANCE COMPANY, a California domiciled property and casualty insurance company in conservation ("CIC"), APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC. a New Mexico domiciled property and casualty insurance company ("AUCRA") and _____, a/an _____domiciled property and casualty insurance company (the "Reinsurer"). CIC, AUCRA and the Reinsurer are referred to herein collectively as the "Parties".

WHEREAS, Cedants desire to cede, transfer, assign and sell to the Reinsurer all of CIC's right, title and interest in and to the Policies;

WHEREAS, the Reinsurer desires to assume Cedants' duties and obligations in connection with, relating to, or arising out of such Policies upon the terms and subject to the conditions set forth herein;

WHEREAS, Cedants desire to cede, on an indemnity reinsurance basis, to the Reinsurer, Cedants' Policy Liabilities in connection with, relating to and arising out of the Policies, upon the terms and conditions set forth herein;

WHEREAS, the Reinsurer desires to reinsure and assume one hundred percent (100%) of Cedants' Policy Liabilities arising under or in connection with the Policies, upon the terms and subject to the conditions set forth herein; and

WHEREAS, in connection with the foregoing, the Superior Court for the County of San Mateo has issued an order approving a Rehabilitation Plan (the "Rehabilitation Plan") that calls for the execution and delivery of this Reinsurance Agreement as of the Closing of the transactions contemplated thereunder;

NOW, THEREFORE, in consideration of the mutual covenants and promises, and upon the terms and conditions hereinafter set forth, the Parties hereto agree as follows.

ARTICLE I
DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given such terms in the Rehabilitation Plan. For purposes of this Agreement, the following terms shall have the meanings specified below.

"Cendants" means CIC and AUCRA.

"Claims" shall have the meaning set forth in Section 7.03.

"Dispute" shall have the meaning set forth in Section 11.02.

"Disputed Complaint" shall have the meaning set forth in Section 7.05.

"Effective Time" means 11:59 p.m. Pacific Time, on the Closing Date.

"Extra-Contractual Liabilities" means any and all liabilities and obligations of any nature, kind or description for (1) consequential, extra-contractual, tort, bad faith, exemplary, punitive, special or similar damages; and (2) statutory or regulatory damages, fines, penalties, forfeitures, and similar charges of a penal or disciplinary nature.

"GAAP" means generally accepted accounting principles consistently applied throughout the specified period and in a comparable period in the immediately preceding year.

"JAMS" shall have the meaning set forth in Section 11.03.

"Law" means all applicable laws, decisions, rules, regulations, ordinances, codes, statutes, judgments, injunctions, orders, decrees, licenses, permits, policies, administrative interpretations and other requirements of Governmental Authorities.

"Non-Novated Policies" shall have the meaning set forth in Section 2.04.

"Novated Policies" means those Policies transferred to the Reinsurer by novation as of the Novation Date and under which Policies the Reinsurer shall have become the successor to the Cedants under the Policies as described in Section 2.03.

"Novation Date" shall have the meaning set forth in Section 3.02 hereof.

"Obligations" shall have the meaning set forth in Section 2.01 hereof.

"Policies" means insurance policies issued by Cedants to California, Connecticut and New York Policyholders or to cover, in whole or in part, employees in California, Connecticut and New York. "Policies" include (1) all guaranteed-cost workers' compensation and employers' liability insurance policies issued by CIC, and (2) all workers' compensation and employers' liability insurance policies, supplements, endorsements, riders and ancillary agreements in connection therewith, classified by CIC as SolutionOne Profit Sharing or EquityComp, including Reinsurance Participation Agreements ("RPAs") entered into by Cedants, but excluding FELA and Jones Act exposures. As used in this Agreement "Policies" includes policies or other agreements that are (1) in effect as of the Effective Time; (2) become effective after the Effective Time, including through (a) the reinstatement of lapsed policies pursuant to provisions therein or of applicable Law, (b) the issuance or renewal thereof by Cedants after the Effective Time to honor quotes outstanding as of the Effective Time, or to satisfy renewal rights of employers under contractual provisions or applicable Law, or (c) modifications agreed to by the Reinsurer on behalf of Cedants pursuant to the authority granted to the Reinsurer under Section 7.01 of the Reinsurance Agreement; and (3) guaranteed-cost workers' compensation and employers liability insurance policies issued by Cedants to California, Connecticut or New York Policyholders that have expired prior to the Closing Date, where the gross liabilities and obligations of Cedants arising under or in connection with such policies are unpaid or unperformed as of the Effective Time.

"Policyholder" means (a) any Person that is named as an insured under a Policy, or (b) any Person other than the Cedants, or any Affiliate of CIC that is named as a party to an RPA issued in conjunction with a Policy.

"Policy Liabilities" means Cedants' gross liabilities and obligations arising under or in connection with the Policies to the extent the same are unpaid or unperformed on or after the Effective Time, before deduction for all other applicable cessions, if any, under Cedants' reinsurance programs. In addition, the term "Policy Liabilities" shall include:

(a) all Extra-Contractual Liabilities that arise from any act, error or omission after the Effective Time, whether or not intentional, in bad faith or otherwise, by the Reinsurer or any of its affiliates, or any of their respective officers, employees, agents or representatives relating to the Policies, and any attorneys' fees incurred by the Reinsurer, and Cedants related to such Extra-Contractual Liabilities;

(b) all liabilities and obligations for premium taxes arising on account of any premiums with respect to the Policies allocable to coverage after the Effective Time;

(c) all liabilities and obligations for returns or refunds of premiums (irrespective of when due) under the Policies;

(d) any assessment required by any insurance guaranty, insolvency, or other similar fund maintained by California, Connecticut or New York relating to the Policies assessed or imposed on the basis of premium for coverage after the Effective Time;

(e) all liabilities and obligations for commission payments and other compensation, if any, due and payable with respect to the Policies to or for the benefit of agents and brokers to the extent that such amount accrues after the Effective Time; and

(f) any obligation arising as a result of the Reinsurer's failure to perform its obligations pursuant to Section 7.07.

"SAP" means statutory accounting principles prescribed or permitted by the CDI with respect to CIC, and permitted by the New Mexico Department of Insurance with respect to AUCRA consistently applied throughout the specified period and in the comparable period in the immediately preceding year in connection with the preparation of the statutory financial statements of Cedants.

"Services" shall have the meaning set forth in Section 7.02.

ARTICLE II
BUSINESS TRANSFERRED AND REINSURED

Section 2.01. Assignment of Policies. As of the Effective Time (1) except as is otherwise provided in Section 5.01 below, Cedants hereby cede, transfer, assign and sell to the Reinsurer all of Cedants' right, title and interest in the Policies identified in Schedule 2.01 attached hereto and made a part hereof, and delegates to the Reinsurer all of Cedants' duties and obligations of performance and payment under the Policies arising after the Effective Time, and (2) the Reinsurer hereby accepts, assumes and agrees to perform all of Cedants' duties and obligations, whether direct, indirect, contingent, unliquidated, unmatured or otherwise arising after the

Effective Time (collectively, "Obligations"), in connection with, relating to, or arising out of the Policies.

Section 2.02. Novation. As soon as practicable after the Effective Time, the Conservator and the Reinsurer shall each use their commercially reasonable efforts to effect the assumption by novation by the Reinsurer of the Policies (each such Policy being referred to herein as a "Novated Policy" and Novated Policies shall include any such subsequently novated Policies). If the Reinsurer does not for any reason assume by novation any Policy, then the Reinsurer shall assume, accept and reinsure, on an indemnity reinsurance basis, 100% of the Policy Liabilities related to such Non-Novated Policies in accordance with the terms and conditions of this Agreement.

Section 2.03. Direct Obligations. To the extent that the Reinsurer assumes by novation any Policies under applicable Law, as of the Novation Date (1) the Reinsurer shall be the successor to Cedants under such Novated Policies as if such Novated Policies were direct obligations originally issued by the Reinsurer and the Reinsurer shall be responsible for the performance of all obligations and the payment of all benefits and amounts due under the Novated Policies in accordance with their terms; (2) the Reinsurer shall be substituted in the place and stead of Cedants and each policyholder under any such Novated Policy shall disregard Cedants as a party thereto and treat the Reinsurer as if it had been originally obligated thereunder except as otherwise provided herein; (3) Cedants shall be released of all liability with respect to such Novated Policies; (4) the Policyholders under such Novated Policies shall have the right to file claims arising under such Novated Policies directly with the Reinsurer and shall have a direct right of action for indemnification, benefits and services under such Novated Policies against the Reinsurer, and the Reinsurer hereby consents to be subject to any such direct action taken by any such Policyholder; and (5) if the Reinsurer is an Affiliate of CIC, the Policies and Policy Liabilities reinsured and assumed pursuant to this Agreement shall be administered by an independent third-party administrator as provided in Section 2.2 of the Rehabilitation Plan, including adjustment and payment of claims and setting of loss reserves until all Policies and Policy Liabilities reinsured and assumed hereunder have been fully discharged and extinguished.

Section 2.04. Indemnity Reinsurance. Effective as of the Effective Time, Cedants shall cede to the Reinsurer, and the Reinsurer shall assume from Cedants on an indemnity reinsurance basis, 100% of the Policy Liabilities under all Policies that are identified in Schedule 2.01 attached hereto and made a part hereof which the Reinsurer has not for any reason (including the lack of any required approval or consent of a Policyholder under a Policy) as of the Effective Time assumed by novation (each such Policy being referred to herein as a "Non-Novated Policy"). It is understood and agreed that the Policyholders shall have the right to file claims arising under such Non-Novated Policies directly with the Reinsurer and shall have a direct right of action for indemnification, benefits and services under such Non-Novated Policies against the Reinsurer, and the Reinsurer hereby consents to be subject to any such direct action by any such policyholders. Notwithstanding the foregoing, the term "Non-Novated Policy" shall not include any Policy from and after the date of its assumption by novation at any time by the Reinsurer.

Section 2.05. Policy Liabilities. The Reinsurer accepts, reinsures, and assumes the

Policies and Policy Liabilities subject to any and all defenses, setoffs, and counterclaims to which Cedants would be entitled with respect to the Policy Liabilities, it being expressly understood and agreed by the Parties hereto that no such defenses, setoffs, or counterclaims are or shall be waived by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, and that the Reinsurer is and shall be fully subrogated in and to all such defenses, setoffs, and counterclaims. From and after the Effective Time, as among the Parties, the Reinsurer shall bear and shall have responsibility for paying or performing all Policy Liabilities. The Policy Liabilities ceded under this Agreement shall be subject to any changes required by Law and the same rates, terms, conditions, waivers, interpretations, modifications and alterations as the Policies.

ARTICLE III
ASSUMPTION CERTIFICATES; OPTION LETTERS

Section 3.01. Notification Materials. The Conservator shall prepare and deliver a Notice of Transfer and Certificate of Assumption together with those notices and materials substantially in the form set forth in Exhibit A attached hereto (collectively, the "Notification Materials"), which shall inform each Policyholder to a Policy of the proposed transfer, assumption and novation of such Policy. The Conservator shall prepare the Notification Materials for inclusion in the Notification Package as soon as feasible, but no later than 10 days after the Effective Date of the Rehabilitation Plan.

Section 3.02. Mailing. No assumption by novation of a Policy shall take effect until the earlier of the acceptance of the assumption by the Policyholder to a Policy or thirty (30) days (or such other period, if any, as may be required by applicable Law) (the "Novation Date") after the Notification Materials have been mailed to each Policyholder.

Section 3.03. Expenses. All expenses incurred by the Parties hereto to prepare and mail the Notification Materials pursuant to this Article shall be the exclusive responsibility of CIC.

ARTICLE IV
TERM

Section 4.01. Term. This Agreement shall remain in force and effect until all Policy Liabilities reinsured and assumed by Reinsurer have been discharged in full, or all Policies are transferred and assumed by the Reinsurer by novation and all obligations of the Reinsurer hereunder have been fully discharged and extinguished.

ARTICLE V
CONSIDERATION

Section 5.01. Consideration to the Reinsurer. The Reinsurer shall be entitled to all premium, premium adjustments and other consideration allocable to coverage provided by the Policies after the Effective Time (irrespective of when due) received by Cedants or the Reinsurer with respect to the Policies. In the event that Cedants receive any premium or other consideration with respect to a Policy allocable to coverage after the Effective Time, Cedants shall promptly remit such premiums and other consideration to the Reinsurer along with all pertinent information

pertaining thereto including the nature of the payment, source of funds, policy number and period to which it relates. In the event that the Reinsurer receives any premium or other consideration with respect to a contractual liability or contractual obligation arising under a Policy paid or performed by Cedants prior to the Effective Time, the Reinsurer shall promptly remit such premiums and other consideration to Cedants along with all pertinent information pertaining thereto including the nature of the payment, source of funds, policy number and period to which it relates.

Section 5.02. Application of Future Consideration. Any premium, premium adjustments and other consideration received and retained by the Reinsurer pursuant to Section 5.01 shall be applied by the Reinsurer to the oldest unpaid obligations or outstanding invoices relating to the period after the Effective Time.

Section 5.03. Additional Consideration for Indemnity Reinsurance. As additional consideration for the assumption by Reinsurer of the Policy Liabilities, Cedants shall (1) transfer to Reinsurer as of the Effective Time Cedants' right, title and interest to admitted assets of Cedants free and clear of any Liens, having a net admitted asset value determined in accordance with SAP equal to Cedants' net unearned premium reserve, loss, and loss adjustment expense (including losses that have been incurred but not reported) reserve, if any, attributable to claims arising under the Policies prior to the Effective Time; (2) assign to Reinsurer as of the Effective Time Cedants' right, title and interest to all collateral posted by any Cedant Policyholder pursuant to the terms of the Policies and maintained by Cedants or any Affiliate of CIC to secure the obligations of the Policyholders under the Policies; and (3) assign to Reinsurer any amounts due to Cedants under any reinsurance agreements in effect on or after the Effective Time including any renewals or extensions thereof, between Cedants and any reinsurer (other than the Reinsurer) relating to the Policy Liabilities assumed by the Reinsurer under this Agreement. All recoveries by Cedants from reinsurers other than the Reinsurer, to the extent such reinsurance agreements, treaties and contracts provide reinsurance coverage for the Policy Liabilities shall be paid promptly by Cedants to the Reinsurer.

ARTICLE VI
ACCOUNTING AND SETTLEMENT

Section 6.01. Accounting Reports. On or before the last Business Day of each month, the Reinsurer shall provide Cedants with reports of activities under this Agreement with respect to the Policies for the preceding month showing any amounts due Cedants or the Reinsurer, as the case may be, as reimbursement for paid claims, premiums or other amounts due with respect to the Policies and any information required by the Statement of Statutory Accounting Principles, as amended, of the National Association of Insurance Commissioners. On or before the last Business Day of January, April, July and October, the Reinsurer shall provide Cedants with quarterly reports or an annual report of such activities as appropriate.

Section 6.02. Financial Statement Information. The Reinsurer and Cedants shall each provide the others with the financial, accounting and actuarial information necessary to prepare SAP regulatory, tax and GAAP monthly, quarterly and annual financial statements and returns and satisfy other requirements including reserve and related calculations regarding the Policies in the form reasonably required by the Reinsurer and Cedants. Cedants and the Reinsurer shall agree to mutually acceptable procedures and time schedules for the transmission and receipt of such information.

Section 6.03. Settlements. Within ten (10) Business Days after delivery of each monthly report, the Reinsurer and Cedants shall settle on an estimated basis, all amounts then due under this Agreement for that month. The Reinsurer and Cedants shall make a final settlement of all amounts due for each calendar year within twenty (20) Business Days after the delivery of the annual report referred to in Section 6.01 hereof.

Section 6.04. Net Payment Basis. Amounts payable under this Agreement by the Parties hereto shall be settled against each other, dollar for dollar, and only a net payment shall be due; provided, however, that no balance or amount due by the Parties under any other agreement shall be offset against any obligation arising under this Agreement.

Section 6.05. Late Payments. If any payment due any Party is received by another Party more than sixty (60) days after the due date for such payment under this Agreement, interest shall accrue from the date on which such payment was due (taking into account the provisions of Section 6.06 hereof) until payment is received by the Party entitled thereto, at an annual rate equal to the Bank of America Reference Rate quoted for six-month periods as reported in The Wall Street Journal on the first Business Day of the month in which such payment first becomes due.

Section 6.06. Federal Funds. All settlements in accordance with this Agreement shall be made by wire transfer of immediately available funds on the due date, or if such day is not a Business Day, on the next day which is a Business Day. Payment may be made by check payable in immediately available funds in the event the Party entitled to receive payment has failed to provide wire transfer instructions.

Section 6.07. Reports to Governmental Authorities. During the term of this Agreement,

the Reinsurer and Cedants shall promptly furnish each other copies of any and all filings with, and reports or communications received from, any Governmental Authority which relates directly and materially to the Policies, including, without limitation, each annual statement, each quarterly financial report to the Governmental Authority of the Party's domicile having principal jurisdiction over the Party and each report on periodic examination issued by such Governmental Authority to the extent it relates to the Policies.

ARTICLE VII
POLICY ADMINISTRATION; REPORTING

Section 7.01. Administration of Policies. The Reinsurer, or, if the Reinsurer is an Affiliate of CIC, an independent third-party administrator appointed by the Conservator of CIC as provided in Section 2.2 of the Rehabilitation Plan, shall administer the Policies and Policy Liabilities reinsured and assumed by Reinsurer pursuant to this Agreement including adjustment and payment of claims and setting of loss reserves with respect to all Policies and Policy Liabilities reinsured and assumed hereunder until all Policies and Policy Liabilities reinsured and assumed pursuant to this Agreement have been fully discharged and extinguished. Without limiting the foregoing, the Reinsurer or the third-party administrator on behalf of the Reinsurer, shall provide reasonable advance notice to Cedants of its intent to cancel specific Policies for non-payment of premium. Unless the applicable Cedant objects to the proposed cancellations within five calendar days of receipt of the notice from the Reinsurer or the third-party administrator, the Reinsurer or the third-party administrator on behalf of Reinsurer shall have the right to cancel the referenced Policies for non- payment of premium in a manner consistent with applicable Law. If the applicable Cedant objects to the proposed cancellation of any Policy for non-payment of premium, the applicable Cedant shall indemnify the Reinsurer for any unpaid premium with respect to any such Policy until such Policy is cancelled.

Section 7.02. Administration. The Reinsurer or a third-party administrator on behalf of the Reinsurer shall, at the Reinsurer's expense, provide the technical and administrative service, assistance and support functions described in Schedule 7.02 attached hereto (the "Services") reasonably necessary or appropriate for the proper management and administration of the Policies, which shall include, but not be limited to, the Services required for the proper administration of the Policies prior to the Effective Time and not performed as of the Effective Time. The Services by Reinsurer or a third-party administrator on behalf of the Reinsurer shall at all times be consistent with applicable Law, regulatory actions, and pronouncements.

Section 7.03. Claims Payment Instructions. The Reinsurer or a third-party administrator on behalf of the Reinsurer, as appropriate, at the expense of the Reinsurer, shall administer and process all payments to injured workers for covered claims under the Policies (the "Claims") in conformance with applicable Law, including review, investigation, adjustment, settlement, defense and payment of Claims, special investigation and anti-fraud compliance, and preparation of any report required concerning the foregoing Services and will, in connection with such Claims administration, retain, at its sole discretion, any outside investigation firms, adjusters, attorneys or other professionals that the third party administrator or Reinsurer, as appropriate, deems necessary in the adjustment of such Claims.

Section 7.04. Communications Relating to Policies. On and after the Effective Time, Cedants shall forward promptly to the Reinsurer all notices and other written communications it receives relating to the Policies (including all inquiries or complaints from state insurance regulators, agents, brokers and policyholders and all notices of claims, suits and actions for which it receives service of process). Cedants shall be entitled to retain copies of all such materials.

Section 7.05. Complaint Handling Procedure. The Parties shall cooperate with each other in providing information necessary to respond to any inquiries and complaints concerning the Policies. All inquiries and complaints concerning the Policies received by Cedants shall be forwarded immediately by email, facsimile or overnight mail to a contact person designated by the Reinsurer for reply. After consultation with the applicable Cedant, except as provided below, the Reinsurer shall answer all inquiries and complaints received by it concerning the Policies. If the Reinsurer and the applicable Cedant disagree as to the appropriate response to an inquiry or complaint, the applicable Cedant shall be entitled to assume, at its own expense, the control of the handling of the response to such inquiry or complaint (a "Disputed Complaint"), including employment of counsel. The applicable Cedant shall apprise the Reinsurer of and consult with the Reinsurer with respect to the progress of a Disputed Complaint. In exercising such control, Cedants shall act in good faith with respect to similar inquiries or complaints. Any payment arising out of a Disputed Complaint controlled by Cedants, to the extent such payment constitutes an Extra-Contractual Liability, shall be added to the Policy Liabilities and shall be unconditionally binding on the Reinsurer; provided, however, that if the applicable Cedant receives an offer of settlement or compromise from the other parties to a Disputed Complaint for a specific amount or obtains a commitment from such other parties that they would accept a compromise or settlement requiring only the payment of a specific amount, the granting of an appropriate release or similar accommodation, and Cedants, after mandatory consultation with and over the objection of the Reinsurer, refuses to consent thereto and elects to continue to dispute or otherwise pursue such Disputed Complaint, then the liability of the Reinsurer with respect to such Disputed Complaint shall be deemed limited to that amount including expenses for which Cedants would have been liable if such compromise and settlement had been accepted by Cedants. Upon answering such inquiries or complaints, the Reinsurer shall furnish Cedants with a copy of the complaint file. The Reinsurer shall be solely responsible for maintaining any complaint files, complaint registers or other reports of any kind, that are required to be maintained under applicable Law.

Section 7.06. Filings. The Reinsurer shall be responsible for all compliance and regulatory matters relating to the administration of the Policies, including monitoring changes in applicable Law, filing and refiling forms and rates, and preparing and filing all reports and other filings required by applicable Law. The Reinsurer shall provide to Cedants copies of all reports and filings with respect to the Policies required to be made with any Governmental Authority.

Section 7.07. Communications Relating to Policies. On and after the Effective Time, Cedants shall forward promptly to the Reinsurer all notices and other written communications received by it relating to the Policies (including all inquiries or complaints from Governmental Authorities, agents, brokers and insureds and all notices of claims, suits and actions for which it receives service of process). Cedants shall be entitled to retain copies of all such materials.

Section 7.08. Inspection. Each Party hereto and its respective authorized representatives shall have the right, upon prior written notice, at reasonable times during normal business hours,

to inspect and review all books, records, accounts, reports, tax returns, files and information of the other party hereto reasonably relating to this Agreement. The Parties shall keep all non-public information received from the other Party strictly confidential, and unless otherwise required by applicable Law or Governmental Authority, shall not disclose any of the same without obtaining the prior approval of the Party providing the information. The rights of the Parties under this Section 7.08 shall survive termination of this Agreement.

ARTICLE VIII
REGULATORY APPROVALS; STATEMENT CREDIT

Section 8.01. Regulatory Approvals. The consummation of this Agreement and the transactions contemplated hereby are expressly contingent upon and subject to obtaining any and all such approvals and consents as may be required by applicable Law, regulation, or from the Conservation Court and any Governmental Authority. No provision in this Agreement shall be deemed to require any Party hereto to take any action prohibited by applicable Law, regulation, or Governmental Authority. The form of any application for any such approvals or consents as may be required by applicable Law, regulation, or Governmental Authority shall be approved by Cedants and the Reinsurer prior to the filing of any such application.

Section 8.02. Statement Credit. The Reinsurer shall at its own expense take all actions reasonably necessary to permit Cedants to obtain full financial statement credit in all applicable jurisdictions for the reinsurance provided to it by the Reinsurer and the assumptions by novation pursuant to this Agreement, including, if necessary, posting acceptable security.

ARTICLE IX
INDEMNIFICATION

Section 9.01. Indemnification by the Reinsurer. The Reinsurer shall indemnify, defend and hold Cedants harmless from and against all Policy Liabilities and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees and expenses) that are based upon or arise out of the breach of any obligation of the Reinsurer provided for in this Agreement.

Section 9.02. Indemnification by Cedants. Cedants shall indemnify the Reinsurer against, and hold Reinsurer harmless from, all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees and expenses) that are based upon or arise out of the breach of any obligation of either Cedant provided for in this Agreement.

ARTICLE X
INSOLVENCY

Section 10.01. Payments by the Reinsurer. With respect to any Policy, the Reinsurer hereby agrees that all amounts due under this Agreement with respect to the Policies shall be payable by the Reinsurer to any conservator, liquidator, or statutory successor of a Cedant on the basis of the claims allowed against a Cedant by any court of competent jurisdiction or by any conservator, liquidator, or statutory successor of a Cedant having authority to allow such claims, without diminution because of that insolvency; or because the conservator, liquidator, or statutory successor has failed to pay all or a portion of any claims. Payments by the Reinsurer as set forth in

this Section 10.01 shall be made directly to the applicable Cedant, or to its conservator, liquidator, or statutory successor, except where the Policy specifically provides another payee of such reinsurance in the event of the insolvency of either Cedant.

Section 10.02. Claims. It is agreed that in the event of the insolvency of a Cedant, the liquidator, receiver or other statutory successor of a Cedant shall give prompt written notice to the Reinsurer of the pendency or submission of a Claim under the Policies reinsured and assumed hereunder. During the pendency of such claim, the Reinsurer may investigate such Claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense available to a Cedant, or their respective receiver. The expense thus incurred by the Reinsurer is chargeable against the applicable Cedant, subject to any court approval, as a part of the expense of insolvency, liquidation, or rehabilitation to the extent of a proportionate share of the benefit which accrues to either Cedant, solely as a result of the defense undertaken by the Reinsurer.

Section 10.03. Amounts Due under the Policies. All amounts due under the Policies shall be payable by the Reinsurer on the basis of the liability of the Reinsurer under the Policies, without diminution because of the insolvency of a Cedant. Any benefits or amounts due to insureds with respect to a Policy shall be paid or performed by the Reinsurer in accordance with the Policy.

ARTICLE XI
ARBITRATION

Section 11.01. Conciliation. If a dispute between the Parties relating to this Agreement is not resolved within ten (10) Business Days from the date that a Party has notified the other Party that such dispute exists, then such dispute shall be submitted on the next Business Day for conciliation to a senior executive officer or his or her designee of each Party. If such senior executive officers are unable to resolve the dispute within fifteen (15) Business Days from the date that it is first presented to them, then such dispute shall be referred to binding arbitration.

Section 11.02. Arbitration. In the event of any dispute between the Parties hereto relating to, arising out of, or in connection with any provision of this Agreement (hereinafter a "Dispute"), the Parties to this Agreement and their representatives, designees, successors and assigns agree that any such Dispute shall be settled by binding arbitration to take place in California.

Section 11.03. Appointment of Arbitrator. Any arbitration hereunder shall be conducted by a single arbitrator chosen from the panel of arbitrators of the Judicial Arbitration & Mediation Services ("JAMS") with experience and expertise in the workers' compensation insurance business. If a JAMS arbitrator with specific experience in the workers' compensation insurance business is not available, the arbitrator must have general experience in the property and casualty insurance industry. Within ten (10) days of notice of a Dispute from a Cedant to Reinsurer or notice from Reinsurer to a Cedant, the applicable Cedants and Reinsurer shall use their best efforts to choose a mutually agreeable arbitrator. If the Cedants and the Reinsurer cannot agree on an arbitrator, the arbitrator shall promptly be selected by JAMS.

Section 11.04. Procedures. The Party submitting a Dispute to arbitration hereunder shall

present its case to the arbitrator and the other Party hereto in written form within twenty (20) days after the appointment of the arbitrator. The other Party hereto shall then have twenty (20) days to submit a written response to the arbitrator and the original party who submitted the Dispute to arbitration. After timely receipt of each Party's case, the arbitrator shall have twenty (20) days to render his or her decision.

Section 11.05. Judicial Formalities. The arbitrator is relieved from judicial formalities and, in addition to considering the rules of law, the limitations contained in this Agreement and the customs and practices of the workers' compensation insurance industry, shall make his or her award with a view to effectuating the intent of this Agreement.

Section 11.06. Decisions Final. The decision of the arbitrator shall be final and binding upon the Parties, and judgment may be entered thereon in a court of competent jurisdiction.

Section 11.07. Costs. Each Party shall bear its own cost of arbitration, and the costs of the arbitrator shall be shared equally by the Parties.

Section 11.08. Equitable Relief. Sections 11.01 and 11.02 shall not apply to any claim for equitable relief, including, without limitation, claims for specific performance, a preliminary injunction, or a temporary restraining order. Such claims shall be submitted to a court of competent jurisdiction, and neither Party shall be required to post any bond or other security. If a Party chooses to pursue equitable relief, such conduct shall not constitute a waiver of, or be deemed inconsistent with, the arbitration provisions set forth in this Article XI. Once the claims for equitable relief are finally decided, any and all remaining claims shall be submitted to arbitration pursuant to Section 11.02 and the arbitrator shall be bound by the findings and rulings of the court on the claims for equitable relief.

Section 11.09. Survival of Article. This Article XI shall survive termination of this Agreement.

ARTICLE XII
MISCELLANEOUS

Section 12.01. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered by hand by certified process server, certified or registered mail (postage prepaid and return receipt requested), by a nationally recognized overnight courier service (appropriately marked for overnight delivery) or by facsimile (with request for immediate confirmation of receipt in a manner customary for communications of such respective type). Notices shall be effective upon receipt and shall be addressed as follows:

If to the Reinsurer:

with a copy to:

If to the Commissioner, the Conservator or CIC, to:

California Insurance Company in Conservation
c/o Conservation & Liquidation Office
100 Pine Street, 12th Floor
San Francisco, CA 94111
Attention: Joe Holloway, CEO

with copies to:

California Department of Insurance
1901 Harrison Street, 6th Floor
Oakland, CA 94612
Attention: Kenneth B. Schnoll, Esq.

Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 300
Sacramento, CA 95814-4407
Attention: Cynthia Larson, Esq.

AUCRA
10805 Old Mill Road
Omaha, NE 68154
Attention: Jeffrey A. Silver

DLA Piper, LLP
555 Mission Street, Suite 2400
San Francisco, CA 94105
Attention: Shand S. Stephens, Esq

All notices and other communications required or permitted under the terms of this Agreement that are addressed as provided in this Section shall (i) if delivered personally or by overnight express, be deemed given upon delivery; (ii) if delivered by facsimile transmission, be deemed given when electronically confirmed; and (iii) if sent by registered or certified mail, be deemed given when received. Any Party from time to time may change its address for notice purposes by giving a similar notice specifying a new address, but no such notice shall be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

Section 12.02. Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) and the Transaction Documents contain the entire agreement and understanding among the Parties with respect to the transactions contemplated hereby, and supersedes all prior agreements

and understandings, written or oral, with respect thereto.

Section 12.03. Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each of the Parties hereto shall pay its own costs and expenses incident to preparing for, entering into and carrying out this Agreement and the consummation of the transactions contemplated hereby.

Section 12.04. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties.

Section 12.05. No Third-Party Beneficiary. Except as otherwise specifically provided in this Agreement, nothing in this Agreement is intended or shall be construed to give any person, other than the Parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions contained herein.

Section 12.06. Amendment. This Agreement may only be amended or modified by a written instrument executed on behalf of the Parties hereto and any such amendment shall be subject to receipt of any and all consents, approvals, permits and authorizations required to be obtained from Governmental Authorities.

Section 12.07. Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by either of the Parties hereto without the prior written consent of the other Party, and any such assignment that is attempted without such consent shall be null and void. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns.

Section 12.08. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations of the Parties under this Agreement will not be materially and adversely affected thereby, (a) such provision shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

Section 12.09. Duty of Cooperation. Each Party hereto shall cooperate fully with the other party hereto in all reasonable respects in order to accomplish the objectives of this Agreement.

Section 12.10. Governing Law. This Agreement shall be governed by and construed in accordance with the Law of the State of California.

Section 12.11. Waiver. Any term or condition of this Agreement may be waived in

writing at any time by the Party that is entitled to the benefit thereof. A waiver on one occasion shall not be deemed to be a waiver of the same or any other breach or nonfulfillment on a future occasion. All remedies, either under the terms of this Agreement, or by Law or otherwise afforded, shall be cumulative and not alternative, except as otherwise provided by Law.

Section 12.12. Errors and Omissions. Inadvertent delays, errors or omissions that occur or are made in connection with the transactions contemplated by this Agreement shall not relieve any Party from any liability that would have attached had such delay, error or omission not occurred, provided that such error or omission is rectified by the Party making such error or omission as soon as possible after discovery thereof and such error or omission does not prejudice any other Party.

Section 12.13. Interpretation. For purposes of this Agreement, the terms "hereof", "herein", "hereto", "hereunder", and derivative or similar words refer to this Agreement (including the exhibits hereto) as a whole unless otherwise indicated. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation". Whenever the singular is used herein, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement.

Section 12.14. Business Associate. In performing functions, activities, or services for, or on behalf of CIC involving the use or disclosure of Protected Health Information, as that term is defined in 45 CFR 164.501, the Reinsurer shall comply with the Business Associate Addendum set forth in Schedule 12.14 hereto.

IN WITNESS WHEREOF, CIC and the Reinsurer have each executed this Agreement as of the date first written above.

CALIFORNIA INSURANCE COMPANY

By:_____

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.

By:_____

[REINSURER]

By:_____

SCHEDULE 2.01

CALIFORNIA INSURANCE COMPANY/AUCRA POLICIES

The Policies identified by contract number:

SCHEDULE 7.02

SERVICES

The Reinsurer, or the third-party administrator on behalf of the Reinsurer, shall perform, consistent with applicable Law and the terms of the Policies, all services reasonably necessary for, and incident to the proper management and administration of, the Policies, including but not limited to the following services:

A. All policyholder services relating to the Policies including the following:

1. Billing and collection of premiums for Policies;

2. Setting renewal rates for the Novated Policies in a manner consistent with the rates and rating plans filed by CIC with applicable Governmental Authorities;

3. Handle policyholder service requests (including adding new employees to Policies, deleting insureds from Policies), inquiries and complaints relating to the Policies;

4. Preparation and mailing of premium notices on a timely basis to policyholders of the Policies; transmission of additional premium notices, lapse notices, reinstatement offers and other notices to policyholders of the Policies;

5. Underwriting and processing of any and all policy changes and reinstatements;

6. Policyholder mailings of any necessary endorsements or other contract documents;

7. Preparation of quarterly financial statement data (within ten (10) Business Days after the end of a calendar quarter) and annual financial statement data (within thirty-five (35) calendar days after the end of the calendar year), for inclusion in CIC's financial statements;

8. Administration of any agreement providing for the payment of commissions relating to any Policy; and

9. Development, as necessary, and maintenance of computer systems required to provide the Services.

SCHEDULE 12.14

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (the "Addendum") supplements and is made a part of the Assumption Reinsurance and Administration Agreement (the "Agreement") by and among California Insurance Company ("CIC''), Applied Underwriters Captive Risk Assurance Company, Inc. ("AUCRA") and _____, a/an _____domiciled property and casualty insurance company (the "Reinsurer"), and is effective as of the effective date of the Agreement.

Recitals

A. CIC and AUCRA may disclose certain information to the Reinsurer pursuant to the terms of the Agreement, some of which may constitute Protected Health Information, as defined below.

B. The parties intend to protect the privacy and provide for the security of Protected Health Information in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191 ("HIPAA") and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR 164.502(e) and 45 CFR 164.504(e).

In consideration of the mutual promises below and the exchange of information pursuant to the Agreement and this Addendum, the parties agree as follows:

1. Definitions

(a) "Business Associate" means the Reinsurer to the extent it performs functions, activities, or services for, or on behalf of, CIC and AUCRA pursuant to the Agreement involving the use or disclosure of Protected Health Information.

(b) "Covered Entity" means CIC and AUCRA.

(c) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(d) "Protected Health Information" has the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(e) Capitalized terms used but not otherwise defined in this Addendum have the same

meaning as those terms in the Privacy Rule.

2. Obligations and Activities of Business Associate

(a) Business Associate shall not use or disclose Protected Health Information other than as permitted or required by this Addendum or as Required by Law.

(b) Business Associate shall use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement and this Addendum.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Addendum.

(d) Business Associate shall report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware.

(e) Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.

(f) Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

(h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity, in the time and manner

designated by Covered Entity, information collected in accordance with Section (2)(i) of this Addendum, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

3. Permitted Uses and Disclosures by Business Associate General Use and Disclosure Provisions

Except as otherwise limited in this Addendum, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

4. Specific Use and Disclosure Provisions

(a) Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(b) Except as otherwise limited in this Addendum, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person (which purpose shall be consistent with the limitations imposed by this Addendum) and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Addendum, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of Law to appropriate Federal and State authorities, consistent with 45 CFR 164.502G)(l).

5. Obligations of Covered Entity Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) Covered Entity shall notify Business Associate of any limitation in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of,

permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as permitted by Sections 4(b) and 4(c) of this Addendum.

6. Term and Termination

(a) This Addendum shall be effective as of the effective date of the Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Upon Covered Entity's knowledge of a material breach of this Addendum by Business Associate, Covered Entity shall either: (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Addendum, and the provision for performance of functions, activities, or services for, or on behalf of Covered Entity under the Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; (ii) immediately terminate this Addendum, and the provision for performance of functions, activities, or services for, or on behalf of Covered Entity under the Agreement, if Business Associate has breached a material term of this Addendum and cure is not possible; or if neither termination nor cure is feasible, report the violation to the Secretary.

(c) Effect of Termination.

A. Except as provided in paragraph (ii) of this section, upon termination of this Addendum, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, and shall retain no copies of the Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

B. In the event that Business Associate determines that returning or destroying

the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

(a) Regulatory References. A reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the HIPAA.

(c) Survival. The respective rights and obligations of Business Associate under Section 6(c) of this Addendum shall survive the termination of this Addendum.

(d) Interpretation. The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict with or appear inconsistent with any provision of this Addendum. Any ambiguity in this Addendum shall be resolved to permit Covered Entity to comply with the Privacy Rule.

CALIFORNIA INSURANCE COMPANY

By:_____

APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC.

By:_____

[REINSURER]

By:_____

EXHIBIT A

NOTIFICATION MATERIALS

NOTICE OF TRANSFER

Dear Policyholder:

This notifies you of an agreement reached between California Insurance Company ("CIC"), Applied Underwriters Captive Risk Assurance Company, Inc. ("AUCRA") and _____, a/an ___domiciled property and casualty Insurance Company ("Reinsurer"), for the transfer of your [California, Connecticut or New York] workers' compensation insurance policy from CIC and/or AUCRA to Reinsurer. This assumption will be effective as of 12:01 a.m. Pacific Time, on _____, 202__. Your policy is being transferred from CIC and/or AUCRA to Reinsurer pursuant to the terms and subject to the conditions set forth in a Rehabilitation Plan relating to the conservation of CIC and as ordered by the Conservation Court supervising the conservation of CIC.

The Reinsurer is authorized to provide workers' compensation insurance in [California Connecticut and New York]. To introduce you to the Reinsurer, attached is a summary of essential information about Reinsurer.

Your rights as a policyholder and the terms of your policy will not change as a result of the transfer. Additionally, your benefits will not change as a result of the transfer. Upon the effective date of the policy transfer, Reinsurer will provide your coverage. It will have direct responsibility for the payment of all claims and benefits and for all other policy obligations.

You have the following options with regard to the assumption of your policy:

Option 1. Accept the transfer of your policy from CIC and/or AUCRA to Reinsurer.

Option 2. Object to the Rehabilitation Plan and the proposed transfer of your policy from CIC and/or AUCRA to Reinsurer.

CIC, AUCRA and Reinsurer recommend that you choose Option 1.

If you wish to choose Option 1, simply do not return the Rejection Form and you will automatically be deemed to have accepted this option as of [date]. You should then attach the [enclosed] Certificate of Assumption [that you will be receiving under separate cover] to your policy.

If you wish to choose Option 2, you must complete the enclosed Rejection Form, sign it and return it within 30 days of this Notice. If you do not return the Rejection Form within that time, you will be deemed to have accepted the transfer of your policy. [You should also return the [enclosed] Certificate of Assumption.]

In considering whether to accept the assumption, please note as of the date of the agreement among CIC, AUCRA and Reinsurer, CIC will withdraw entirely from the California [Connecticut and New York] insurance market and cease offering workers' compensation insurance in California [Connecticut or New York]. Please also note that if you accept Option 2, the Reinsurer will be responsible for the policy liabilities and administration of the CIC and/or AUCRA California [Connecticut or New York] workers' compensation insurance policies after CIC withdraws completely from the California [Connecticut or New York] market. As a result, if you reject the assumption, Reinsurer will be responsible for the Policy Liabilities under such Policies and for administering your CIC and/or AUCRA policy until your insurance terminates.

The enclosed Certificate of Assumption should be attached to your policy unless you choose to reject the assumption of your policy.

Your current and future premiums should be paid as indicated by your premium notices.

If you have any questions about the assumption of your policy or about CIC and/or AUCRA or [Reinsurer], please feel free to call CIC at ___. Written inquiries may be mailed to: CIC at [Address], [City], [State] [Zip Code].

Sincerely,

CALIFORNIA INSURANCE COMPANY/AUCRA	[REINSURER]

CERTIFICATE OF ASSUMPTION

You are hereby notified that [Reinsurer] _____has, effective as of _____, 2020 (the "Effective Time"), assumed all rights, liabilities, and obligations of CIC and/or AUCRA under your workers' compensation insurance policy with CIC and/or AUCRA.

From and after the Effective Time, all references in your policy or certificate to "CIC" or "AUCRA" are hereby changed to [Reinsurer] "_____". Except for the substitution of [Reinsurer] _____for CIC and/or AUCRA as your insurer, your rights as an insured will not be affected by the change in companies, and the terms and conditions of your policy or certificate will not be changed by reason of the assumption.

All correspondence and inquiries concerning your policy or certificate, including premium payments, policy or certificate changes, and notices of claims, should be submitted to:

[Reinsurer]
[Street Address]
[City], [State [Zip Code]

This Certificate of Assumption, as of the Effective Time, forms a part of and should be attached to the policy or certificate issued to you by CIC and/or AUCRA.

IN WITNESS WHEREOF, _____has caused this Certificate of Assumption to be duly signed and issued.

_____
[Reinsurer]

NOTICE OF REJECTION OF ASSUMPTION

To: California Insurance Company/Applied Underwriters Captive Risk Assurance Company, Inc.

REJECTION

I have reviewed the Notice of Transfer and the Certificate of Assumption whereby [Reinsurer] would assume all of the rights, liabilities, and obligations of California Insurance Company and/or Applied Underwriters Captive Risk Assurance Company, Inc. ("AUCRA") under my workers' compensation insurance policy previously issued by California Insurance Company and/or AUCRA.

I hereby notify you that I REJECT the proposed assumption of my policy and the substitution of [Reinsurer] thereunder, and I wish to retain my policy with California Insurance Company and/or AUCRA. I understand and agree that the even though my Policy will not be assumed by [Reinsurer], the Policy Liabilities under my CIC and/or AUCRA Policy will be reinsured and administered by [Reinsurer].

DATE:

_____

Policyholder Signature

_____

Print or Type Name

_____

California Insurance Company and/or AUCRA Policy ID #