

BILL LOCKYER, Attorney General
of the State of California
W. DEAN FREEMAN
Lead Supervising Deputy Attorney General
MARK P. RICHELSON
Supervising Deputy Attorney General
RAYMOND B. JUE
Deputy Attorneys General
State Bar No. 61656
300 South Spring Street, Room 1702
Los Angeles, CA 90013
Telephone: (213) 897-2480
Facsimile: (213) 897-5775

Attorneys for the Applicant, Insurance Commissioner
of the State of California

ORIGINAL FILED
MAR 25 2003
LOS ANGELES
SUPERIOR COURT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

**INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,**

Applicant,

v.

**LEGION INSURANCE COMPANY and
VILLANOVA INSURANCE COMPANY,
Pennsylvania corporations,**

Respondent.

Case No.: BS 075861

**VERIFIED APPLICATION FOR
ORDER OF LIQUIDATION;
POINTS AND AUTHORITIES
IN SUPPORT OF
APPLICATION;
DECLARATION OF ROBERT
LOO IN SUPPORT OF
APPLICATION (Ins. Code
§ 1016)**

Date: April 25, 2003
Time: 9:30 a.m.
Dept.: 85

Applicant Insurance Commissioner of the State of California (the
"Commissioner"), respectfully alleges the following:

1. Applicant is the duly appointed Insurance Commissioner of the State of California.
2. Respondents Legion Insurance Company and Villanova Insurance Company ("Respondents" or "Legion" and "Villanova"), are now and at all times mentioned have been corporations duly organized and existing under and by virtue of the

1.

1 laws of the State of Pennsylvania and domiciled there, with their principal offices in
2 Philadelphia, Pennsylvania.

3 3. Legion is authorized to transact the following classes of insurance: fire,
4 marine, disability, liability, workers' compensation, common carrier liability, credit, team
5 and vehicle, automobile and miscellaneous insurance in California, under the authority of
6 a Certificate of Authority issued by the Commissioner.

7 4. Villanova is authorized to transact the following classes of insurance: fire,
8 marine, surety, disability, plate glass, liability, workers' compensation, common carrier
9 liability, boiler and machinery, burglary, sprinkler, team and vehicle, automobile, aircraft
10 and miscellaneous classes of insurance in California, under the authority of a Certificate
11 of Authority issued by the Commissioner.

12 5. Respondents have no offices in California and they have no officers in
13 California.

14 6. On March 28, 2002, the Commonwealth Court of Pennsylvania issued
15 Orders of Rehabilitation for Respondents. The Pennsylvania Insurance Commissioner
16 was appointed as Rehabilitator of Respondents effective April 1, 2002.

17 7. On April 1, 2002, Legion stopped paying all claims with the exception of
18 workers' compensation.

19 8. Based on the Pennsylvania court order and an extension to that order, the
20 Pennsylvania Rehabilitator was required to stop paying workers' compensation claims on
21 October 25, 2002, to those claimants in states where the statutory deposit had not been
22 turned over to the Pennsylvania Rehabilitator to be used to pay those claims. By
23 Pennsylvania court order, express authorization to permit payment of workers'
24 compensation claims was granted in two-week intervals. This ruling impacted California
25 policyholders by delaying payment to them and prompted the Commissioner to seek an
26 ancillary receivership in order to secure the workers' compensation statutory deposits in
27 California. All other claims in California went unpaid.

28 9. On May 3, 2002, pursuant to Insurance Code §1064.3 and upon verified

1 application by the Commissioner, this Court issued an Order appointing the
2 Commissioner as Ancillary Receiver of Respondents.

3 10. Pursuant to Insurance Code §11715, Legion deposited \$87,446,916 and
4 Villanova deposited \$31,939,294 in Letters of Credit in California banks or
5 financial institutions plus \$495,000 in securities to secure their obligations to their
6 California workers' compensation policyholders.

7 11. Pursuant to the May 3, 2002, order appointing the Commissioner Ancillary
8 Receiver, the Commissioner drew down the combined amount of \$119.3 million from the
9 Letters of Credit used to collateralize Legion's workers' compensation statutory deposit
10 requirements. This draw down was accomplished to protect California workers'
11 compensation policyholders from Respondents' potential failure to pay workers'
12 compensation benefits.

13 12. The Commissioner contracted with the California Insurance Guarantee
14 Association (CIGA) to administer the workers' compensation deposits to ensure
15 continued payments of workers' compensation benefits to California policyholders. The
16 California workers' compensation policyholders currently are paid from these funds.
17 However, it is estimated that these funds will be depleted in early May 2003.

18 13. On August 29, 2002, the Pennsylvania Department of Insurance filed a
19 Petition for Liquidation of Respondents in the Pennsylvania Commonwealth Court.
20 Protracted hearings on the liquidation petition continued throughout November 2002.
21 Subsequently, the Pennsylvania Commonwealth Court requested additional briefing and
22 established a post-hearing briefing schedule through December 2002. The Pennsylvania
23 Commonwealth Court has yet to act on the Petition for Liquidation. No liquidation order
24 has been issued in Pennsylvania.

25 14. In October 2002, Respondents were advised to stop writing new business
26 and renewals of existing business in California, and have not resumed doing so.

27 15. The Commissioner determined that Legion had a policyholders' surplus of
28 negative \$292,334,113 as of December 31, 2001, the date of its last officially filed annual

1 statement with the California Department of Insurance. Legion reported that as of
2 December 31, 2001, it had total net admitted assets of \$1,116,131,000 and total liabilities
3 of approximately \$817,835,000 resulting in a policyholders' surplus of \$298,296,000.
4 However, Legion's policyholders' surplus as of December 31, 2001, when adjusted to
5 conform to the laws, regulations and accounting practices of California, was negative
6 \$292,334,113.

7 16. The Commissioner determined that Villanova had a policyholders' surplus
8 of negative \$78,581,803 as of December 31, 2001, the date of its last officially filed
9 annual statement with the California Department of Insurance. Villanova reported that as
10 of December 31, 2001, it had total net admitted assets of \$173,162,000 and total liabilities
11 of \$145,524,000, resulting in a policyholders' surplus of \$27,638,000. However,
12 Villanova's policyholders' surplus as of December 31, 2001, when adjusted to conform to
13 the laws, regulations and accounting practices of California, was negative \$78,581,803.
14 Supervising Insurance Examiner Robert Loo's analysis of Respondents' financial
15 condition is set forth in the Declaration of Robert Loo in Support of Verified Application
16 for Order of Liquidation.

17 17. Insurance Code §§ 700.01, 700.02, and 700.025 set forth the requirement of
18 minimum capital and surplus of \$5,400,000 for an insurer transacting the classes of
19 insurance authorized by the Certificate of Authority issued by the Commissioner to
20 Respondents. The Commissioner determined that liquidation of Respondents is
21 warranted on the grounds that Respondents are in such condition that the further
22 transaction of business by Respondents is hazardous to their policyholders, creditors, and
23 the public (Ins. Code § 1016), and that by reason of their insolvency, Respondents no
24 longer meet the requirements for issuance of a Certificate of Authority (Ins. Code,
25 § 1011 (h)).

26 18. Respondents' policyholder surplus is less than the minimum amount of
27 capital and surplus required by California Insurance Code §§700.01, 700.02 and 700.025,
28 for an insurer transacting the classes of insurance authorized by the Certificate of

1 Authority issued to Respondents by the Commissioner. Pursuant to California Insurance
2 Code §985, Respondents are statutorily insolvent and such condition constitutes grounds
3 for liquidation under California Insurance Code §1011(h) and (i). The Commissioner
4 finds that such deficiencies indicate that Respondent is "in such condition that its further
5 transaction of business will be hazardous to its policyholders, or creditors or to the
6 public" within the meaning of Insurance Code §1011(d).

7 19. Respondents' workers' compensation statutory deposits are estimated to be
8 deficient by at least \$55.9 million (Legion) and \$91.3 million (Villanova), with the
9 likelihood that said deficiencies are substantially higher.

10 20. Since his appointment as Ancillary Receiver, the Commissioner has
11 confirmed that Respondents' financial condition is as analyzed by the Department of
12 Insurance's financial analysts. Further, since being appointed as Ancillary Receiver, the
13 Commissioner has not discovered additional assets that could reasonably lead to
14 Respondents' rehabilitation. In addition, based upon the information currently available
15 to the Commissioner as Ancillary Receiver, he has determined that Respondents'
16 financial condition has worsened since the date of appointment of the Commissioner as
17 Ancillary Receiver, such that no claims are being paid with the exception of workers'
18 compensation claims. Workers' compensation claims are being paid out of Respondents'
19 statutory deposits in California and those deposits are projected to be depleted in early
20 May 2003.

21 21. In light of the fact that both Legion and Villanova have been placed into
22 rehabilitation proceedings in Pennsylvania, copies of this verified application, notice of
23 hearing, the supporting declaration of Robert Loo and all other supporting documents are
24 being sent by UPS overnight mail to the following persons at their last known addresses:
25 (1) M. Diane Koken, the Insurance Commissioner of the State of Pennsylvania; (2) Bruce
26 Daley, the on-site rehabilitator for both Legion and Villanova; (3) Mutual Risk
27 Management, Ltd. the corporate parent of both Legion and Villanova; and (4) the
28 California Insurance Guarantee Association.

1 Based upon the above, and pursuant to Insurance Code §1016, the Commissioner
2 has determined that it would be futile to continue to proceed as Ancillary Receiver, and
3 therefore seeks to liquidate Respondents' business.

4 **WHEREFORE**, the Commissioner prays that this Court issue an order:

5 1. Terminating the Commissioner's status as Ancillary Receiver and
6 appointing him Liquidator of Respondents, as set forth in Insurance Code §1016, and
7 directing him as Liquidator to liquidate the affairs of Respondents, to conduct the
8 business of Respondents, or so much as may seem appropriate, and directing him to act in
9 all ways and exercise all powers necessary for the purpose of carrying out the order,
10 subject to the Pennsylvania receivership;

11 2. Authorizing the Commissioner as Liquidator to take possession of all the
12 assets of Respondents, including books, records and property, both real and personal, in
13 California;

14 3. Vesting title to all property and assets of Respondents, both those presently
15 in Respondents' possession and those which may be discovered later, in California, in the
16 Commissioner as Liquidator or his successor in office, in his official capacity as
17 Liquidator and enjoining all persons from interfering with the Commissioner's possession
18 and title;

19 4. Authorizing the Commissioner as Liquidator to pay for his costs in bringing
20 and maintaining this action, and other actions as are necessary to carry out his functions
21 as Liquidator, out of the funds and assets of Respondents and if there are insufficient
22 funds, to pay his costs out of the Insurance Fund, pursuant to Insurance Code §1035;

23 5. Authorizing the Commissioner as Liquidator to initiate equitable or legal
24 actions or proceedings in this or other states as may appear to him necessary to carry out
25 his functions as Liquidator;

26 6. Authorizing the Commissioner as Liquidator to appoint and employ special
27 deputies, estate managers, other professionals, clerks and assistants and to give each of
28 them the power and authority as he may deem necessary and authorizing the

1 Commissioner as Liquidator to compensate these persons from the assets of Respondents
2 as he may deem appropriate;

3 7. Authorizing the Commissioner as Liquidator to divert, take possession of
4 and secure all mail of Respondents, in order to screen such mail, and to effect a change in
5 the rights to use any and all post office boxes and other mail collection facilities used by
6 Respondents;

7 8. Authorizing the Commissioner as Liquidator to pay all reasonable costs of
8 operating Respondents (including direct and allocated direct costs, direct and allocated
9 general and administrative costs and overhead, and other allocated costs) out of funds and
10 assets of Respondents; and if there are insufficient funds, to pay for his costs out of the
11 Insurance Fund, pursuant to Insurance Code §1035;

12 9. Authorizing the Commissioner as Liquidator to pay as expenses of
13 administration all expenses incurred by the Commissioner as Ancillary Receiver which
14 are presently unpaid and authorizing the Commissioner as Liquidator to pay, upon
15 presentation, the full amount of any checks or drafts which have been issued by him, in
16 his capacity as Ancillary Receiver, and which are outstanding;

17 10. Authorizing the Commissioner as Liquidator, pursuant to Insurance Code
18 §1037(d), to dispose of any excess property of Respondents by any commercially
19 reasonable method, including, but not limited to, sales at public auctions or sales in bulk
20 to the high bidder (provided at least three (3) independent dealers in the kind of property
21 sold are given notice of the opportunity to bid);

22 11. Directing Respondents and all former and present officers, directors, agents,
23 and employees of Respondents to deliver to the Commissioner as Liquidator all
24 California assets, books, records, equipment, and other property of the Respondents;

25 12. Directing that all funds and assets, including certificates of deposit, bank
26 deposits and mutual fund shares, of Respondents, in various financial depository
27 institutions, including banks, savings and loan associations, industrial loan companies,
28 mutual funds or stock brokerages, in California, be vested in the Commissioner as

Liquidator and subject to withdrawal upon his order only;

13. Ordering all persons who maintain records for Respondents, regarding California businesses or California policyholders, to maintain such records and to deliver them to the Commissioner as Liquidator upon his request;

14. Ordering all persons having possession of any lists of policyholders or escrow holders of Respondents in California to deliver all such lists to the Commissioner as Liquidator; and that all persons are enjoined from using any lists or any information contained therein without the consent of the Commissioner as Liquidator;

15. Directing that Respondents and their respective officers, directors, agents, servants, employees, successors, assigns, affiliates, and other persons or entities under their control and all persons or entities in active concert or participation with them, and each of them, shall turn over to the Commissioner as Liquidator records, documentation, charts and/or descriptive material of all funds, assets, property (owned beneficially or otherwise), and all other assets of Respondents in California, and all books and records of accounts, title documents and other documents in their possession or under their control, which relate, directly or indirectly, to assets or property owned by or held by Respondents or to the business or operations of Respondents;

16. Directing the Commissioner as Liquidator to notify promptly all California policyholders of this liquidation order and that coverage by the California Insurance Guarantee Association is effective for thirty (30) days after the entry of such liquidation order, after which time, all California policyholders will be advised to obtain new or replacement policies;

17. Directing that all prior injunctions and other orders of this Court, except to the extent expressly modified herein, are reaffirmed and remain in full force and effect; that all powers and authority granted to the Commissioner as Liquidator under the order prayed for are in addition to, and not in limitation of, the powers of the Commissioner as Liquidator under the Insurance Code and any other statutory or applicable case law;

18. Directing that the rights and liabilities of claimants, creditors, shareholders,

1 policyholders, escrow holders and all other persons in California interested in the assets
2 of Respondents, including the State of California, are fixed as of the date of the entry of
3 the order prayed for;

4 19. Directing that all funds and accounts in the name of Respondents, or the
5 Commissioner as Ancillary Receiver, in various banks or any other institutions in
6 California shall be vested in the Commissioner as Liquidator and subject to withdrawal at
7 his direction only and that the order does not convert funds held in a fiduciary capacity to
8 general assets of the Liquidator;

9 20. Enjoining, except with leave of this court and/or the Pennsylvania
10 Commonwealth Court where the receivership is pending, issued after a hearing in which
11 the Commissioner as Liquidator has received reasonable notice, all persons from
12 obtaining preferences, judgments, attachments or other liens, or making any levy against
13 Respondents or their assets or property, and from executing or issuing or causing the
14 execution or issuance of any court attachment, subpoena, replevin, levy, execution, or
15 other process for the purpose of impounding or taking possession of or interfering with or
16 creating or enforcing a lien upon any property or assets owned or in the possession of
17 Respondents or their affiliates, or the Liquidator, in California and from doing any act
18 interfering with the conduct of business by the Commissioner as Liquidator;

19 21. Enjoining all persons, except by leave of court obtained after reasonable
20 notice to the Commissioner as Liquidator, from accelerating the due date of any
21 obligation or claimed obligation; exercising any right of set-off; taking, retaining,
22 retaking or attempting to retake possession of any real or personal property; withholding
23 or diverting any rent or other obligation; doing any act or other thing whatsoever to
24 interfere with the possession of or management by the Commissioner as Liquidator and of
25 the property and assets, owned or controlled by Respondents or in the possession of
26 Respondents or to in any way interfere with the Commissioner as Liquidator;

27 22. Enjoining Respondents, their officers, directors, governors, agents and
28 employees from transacting any of the business of Respondents, whether in the State of

1 California or elsewhere, or from disposing of, or assisting any person in the transfer or
2 alienation of, the property or assets of Respondents, until further order of this Court;

3 23. Enjoining all persons from instituting, prosecuting or maintaining any
4 action at law or suit in equity, including but not limited to actions or proceedings to
5 compel discovery or production of documents or testimony and matters in arbitration,
6 against Respondents or against the Commissioner as Liquidator of Respondents, except
7 for matters before the California Workers' Compensation Appeals Board, and from
8 attaching, executing foreclosure upon, redeeming of or taking any other legal proceedings
9 against any of the property or assets of Respondents, and from doing any act interfering
10 with the conduct of business by the Commissioner as Liquidator, except upon order from
11 this Court obtained after reasonable notice to the Commissioner as Liquidator;

12 24. That any and all provisions of any agreement entered into by and between
13 any third party and Respondents including, but not limited to, the following types of
14 agreements (as well as any amendments, assignments, or modifications): financial
15 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,
16 mortgages, indemnification agreements, subrogation agreements, subordination
17 agreements, pledge agreements, assignments of rents or other collateral, financial
18 statements, letters of credit, leases, insurance policies, guaranties, escrow agreements,
19 management agreements, real estate brokerage and rental agreements, servicing
20 agreements, attorney agreements, consulting agreements, easement agreements, license
21 agreements, franchise agreements, or employment contracts that provide in any manner
22 that selection, appointment or retention of a conservator, liquidator or trustee by any
23 court, or entry of an order such as hereby made, shall be deemed to be, or otherwise
24 operate as a breach, violation, event of default, termination, event of dissolution, event of
25 acceleration, insolvency, bankruptcy, or liquidation, shall be stayed, and the assertion of
26 any and all rights, remedies relating thereto shall also be stayed and barred, except as
27 otherwise ordered by the Pennsylvania Commonwealth Court, and the Pennsylvania
28 Commonwealth Court shall retain jurisdiction over any cause of action that has arisen or

1 may otherwise arise under any provision;

2 25. Enjoining all persons from interfering with the possession, title and rights of
3 the Commissioner as Liquidator, in and to the property and assets of Respondents, and
4 from interfering with the conduct of the Commissioner as Liquidator in the handling and
5 disposition of the property and assets of Respondents, and from interfering with the
6 conduct of the liquidation, except upon order of this Court obtained after reasonable
7 notice to the Commissioner as Liquidator;

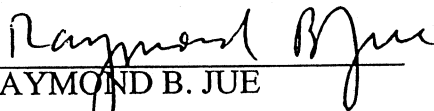
8 26. Enjoining all persons from waste of the assets of Respondents;

9 27. That any and all claims against Respondents (except those policyholder
10 claims already pending against Respondents, which are deemed filed), including those
11 which in any way affect or seek to affect any of the assets of Respondents, wherever or
12 however such assets may be owned or held, must be filed with the Pennsylvania
13 Department of Insurance;

14 28. For such other relief as the Court deems necessary and proper.

15 DATED: March 20, 2003 Respectfully submitted,

16 BILL LOCKYER, Attorney General
17 of the State of California
18 W. DEAN FREEMAN
19 Lead Supervising Deputy Attorney General
20 MARK P. RICHELSON
21 Supervising Deputy Attorney General
22 RAYMOND B. JUE
23 Deputy Attorney General

24 
25 RAYMOND B. JUE
26
27 Attorneys for Applicant, Insurance
28 Commissioner of the State of California

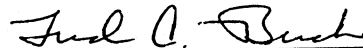
VERIFICATION

I, Fred A. Buck, state that:

I am employed by the Insurance Commissioner of the State of California as Special Deputy Insurance Commissioner and Chief Executive Officer of the Conservation & Liquidation Office ("CLO") of the California Department of Insurance. I have read the foregoing **VERIFIED APPLICATION FOR ORDER OF LIQUIDATION** and know the contents. The facts contained therein are not all within my personal knowledge, and I am informed that no single officer of the CLO has personal knowledge of all these matters. The statements are based upon information assembled by authorized employees of the CLO, and I am informed and believe that the statements based upon that information are true. As to those matters that are within my own personal knowledge, the statements are true.

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

Executed this 20th day of March, 2003 at San Francisco, California.



Fred A. Buck
Chief Executive Officer, CLO
Special Deputy Insurance Commissioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

The Commissioner is applying to this Court for an order appointing him as Liquidator of Respondents Legion Insurance Company and Villanova Insurance Company (collectively "Legion"). The Commissioner's verified application is based upon his determination that it is futile for Respondents' ancillary receivership to continue, and that, pursuant to Insurance Code §1016, it is appropriate to liquidate the business of these companies.

**THE SUPERIOR COURT IS AUTHORIZED TO ISSUE
AN ORDER OF LIQUIDATION UPON VERIFIED
APPLICATION OF THE INSURANCE COMMISSIONER**

The Commonwealth Court of Pennsylvania placed Respondents in rehabilitation. The Commissioner found that Respondents were in such condition that the further transaction of business by Respondents was hazardous to their policyholders, creditors and the public. These are grounds for an ancillary receivership pursuant to Insurance Code §§1011 (d) and 1064.3

Section 1064.3 requires that the Commissioner file an application for appointment as ancillary receiver if it is found that there are sufficient assets of the insurers in California to justify the appointment of the ancillary receiver.

Insurance Code §1016 provides that if at any time after the Commissioner's appointment as Ancillary Receiver, it appears that it would be futile to proceed as Ancillary Receiver, the Commissioner may apply for an order to liquidate and wind up the business of the insurer. Although liquidation is not automatic following a full hearing on the application, if the Commissioner as Ancillary Receiver determines that he is unable to effect rehabilitation of the insurer, liquidation must follow. (Rhode Island Ins. Co. v. Downey (1949) 95 Cal.App.2d 220, 225.)

As stated in this verified application, the Commissioner has established that it would be futile to proceed with the conduct of Respondents' business.

Insurance Code §1019 provides that upon the issuance of an order of liquidation, the rights and liabilities of the insurer and of any other persons, including creditors and policyholders, interested in its assets shall be fixed as of the date of entry of the order.

1 Insurance Code §1020 provides that this Court shall issue orders as may be deemed
2 necessary to, among other things, prevent waste of assets, obtaining of preferences, and
3 interference with the Commissioner as Liquidator or the liquidation proceeding.

4 Insurance Code §1035 provides that the Commissioner as Liquidator may appoint
5 and employ deputy commissioners, clerks, and assistants to carry out his function and to
6 pay the costs and expenses of liquidating the insurer out of the assets of the insurer, and
7 then to extent necessary, out of the funds of the Department of Insurance.

8 Insurance Code §1037 specifies the powers which accrue to the Commissioner
9 upon his appointment as Liquidator. These include, but are not limited to, the authority to
10 collect all monies and debts due to the insurer, to conserve the assets of the insurer, to
11 compromise and settle claims against the insurer, to acquire and dispose of property
12 belonging to the insurer, and to prosecute and defend all lawsuits against the insurer.

13 Lastly, Insurance Code §§1021 and 1022 provide that the Commissioner, upon his
14 appointment as Liquidator, shall publish notice in newspapers of general circulation
15 throughout the State to the insurer's policyholders, creditors, shareholders, and all other
16 persons interested in its assets.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

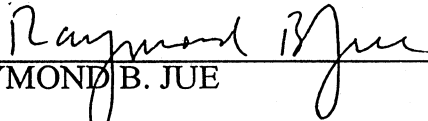
28 ///

1 **CONCLUSION**

2 Based on the facts set forth in this verified application, appointment of the
3 Commissioner as Liquidator of Respondents is fully warranted. For all the foregoing
4 reasons, the Commissioner respectfully submits that his request for an order appointing the
5 Commissioner as Liquidator and to liquidate the business of Respondents should be
6 granted.

7 DATED: *March 20, 2003* Respectfully submitted,

8 BILL LOCKYER
9 Attorney General of the State of California
10 W. DEAN FREEMAN
11 Lead Supervising Deputy Attorney General
12 MARK P. RICHELSON
13 Supervising Deputy Attorney General
14 RAYMOND B. JUE
15 Deputy Attorney General

16 
17 RAYMOND B. JUE

18 Attorneys for Applicant Insurance
19 Commissioner of the State of California

20 RBJ:gp

21 C:\DAT\RB\PLEADINGS\LEGION INS.-VER. APPL.; LOO DECL.