

1 MICHAEL J. STRUMWASSER (SBN 58413)
2 DALE K. LARSON (SBN 266165)
3 CAROLINE CHIAPPETTI (SBN 319547)
4 JULIA MICHEL (SBN 331864)
5 STRUMWASSER & WOOCHEER LLP
6 10940 Wilshire Boulevard, Suite 2000
7 Los Angeles, California 90024
8 Telephone: (310) 576-1233
9 Facsimile: (310) 319-0156
10 Email: mstrumwasser@strumwooch.com
11 Email: dlarson@strumwooch.com
12 Email: cchiappetti@strumwooch.com
13 Email: jmichel@strumwooch.com

8 CYNTHIA J. LARSEN (SBN 123994)
9 JUSTIN GIOVANNETTONE (SBN 293794)
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 400 Capitol Mall, Suite 3000
12 Sacramento, California 95814-4497
13 Telephone: (916) 447 9200
14 Facsimile: (916) 329 4900
15 Email: clarsen@orrick.com
16 Email: jgiovannettone@orrick.com

13 *Attorneys for Insurance Commissioner of the
14 State of California as Conservator of
15 California Insurance Company*

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN MATEO – UNLIMITED JURISDICTION

18 INSURANCE COMMISSIONER OF THE
19 STATE OF CALIFORNIA,

20 Applicant,

21 v.

22 CALIFORNIA INSURANCE COMPANY, a
23 California corporation,

24 Respondent.

**Exempt from filing fees pursuant to
Government Code section 6103**

**Electronically
FILED**

by Superior Court of California, County of San Mateo

ON 10/19/2020

By /s/ Una Finau
Deputy Clerk

Case No. 19-CIV-06531

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CONSERVATOR'S
MEMORANDUM IN SUPPORT OF
APPLICATION FOR APPROVAL OF
REHABILITATION PLAN**

Hearing Date: March 4, 2021

Time: 2:00 p.m.

Dept.: 28

Judge: Hon. George A. Miram

1 **REQUEST FOR JUDICIAL NOTICE**

2 The Insurance Commissioner of the State of California requests that the Court take judicial
3 notice, pursuant to Evidence Code section 452, of the following documents for the reasons stated
4 below.

5 **Exhibit 1**

6 Attached as **Exhibit 1** is a true and correct copy of the June 22, 2016, precedential decision by
7 the Insurance Commissioner of the State of California *In the Matter of the Appeal of Shasta Linen*
8 *Supply, Inc.*, File AHB-WCA-14-31.

9 **Exhibit 1** is relevant because it held that California Insurance Company (CIC), Applied
10 Underwriters, Inc. (AUI), and Applied Underwriters Captive Risk Assurance Company (AUCRA) were
11 so intertwined that they should not be considered separate entities and because it declared that the
12 Reinsurance Participation Agreement (RPA) is unlawful.

13 The Court may take judicial notice of **Exhibit 1** because it is an official act of an executive
14 department of the State of California. A court may take judicial notice of all official acts of any state
15 executive department. (Evid. Code, § 452, subd. (c); *Fowler v. Howell* (1996) 42 Cal.App.4th 1746,
16 1750 [court can take judicial notice of records and files of state administrative agencies]; *United*
17 *Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1011 [granting judicial notice of
18 an agency opinion letter]; *Wolski v. Fremont Investment & Loan* (2005) 127 Cal.App.4th 347, 356
19 [judicially noticing even opinions that, unlike *Shasta Linen*, are explicitly not precedential].)
20 Moreover, the opinion is judicially noticeable because it is publicly available, not reasonably subject to
21 dispute, and is capable of immediate and accurate determination by resort to sources of
22 reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h).)

23 **Exhibit 2**

24 Attached as **Exhibit 2** is a true and correct copy of the August 25, 2016, Stipulated Consent
25 Cease and Desist Order between the Insurance Commissioner of the State of California, CIC, and
26 AUCRA, in the case titled *In the Matter of the Certificates of Authority of California Insurance*
27 *Company, and Applied Underwriters Captive Risk Assurance Company, Inc.*, File MI-2015-00064.

28 **Exhibit 2** is relevant because it shows that CIC agreed to stop marketing its illegal RPA in

1 California starting in 2016.

2 The Court may take judicial notice of **Exhibit 2** because it is an official act of an executive
3 department of the State of California. (Evid. Code, § 452, subd. (c); *Fowler, supra*, 42 Cal.App.4th at p.
4 1750; *United Parcel Service Wage & Hour Cases, supra*, 190 Cal.App.4th at p. 1011; *Wolski, supra*,
5 127 Cal.App.4th at p. 356.) Moreover, the consent order is judicially noticeable because it is publicly
6 available, not reasonably subject to dispute, and is capable of immediate and accurate determination by
7 resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h).)

8 **Exhibit 3**

9 **Exhibit 3** is a true and correct copy of the 2017 Settlement Agreement, executed by the
10 California Department of Insurance, CIC and AUCRA, to settle the Verified Petition for a Peremptory
11 Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed by CIC and AUCRA in the
12 Superior Court of the State of California, Los Angeles County, Case No. BS163243, challenging the
13 Commissioner’s decision in *Shasta Linen*.

14 The Settlement Agreement is relevant because it demonstrates the agreement of the parties to
15 certain modifications to the RPA and fuller disclosures to prospective policyholders.

16 The Court may take judicial notice of **Exhibit 3** because it is an official act of an executive
17 department of the State of California. (Evid. Code, § 452, subd. (c); *Fowler, supra*, 42 Cal.App.4th at p.
18 1750; *United Parcel Service Wage & Hour Cases, supra*, 190 Cal.App.4th at p. 1011; *Wolski, supra*,
19 127 Cal.App.4th at p. 356.) Moreover, the Settlement Agreement is judicially noticeable because it is
20 publicly available, not reasonably subject to dispute, and is capable of immediate and accurate
21 determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h);
22 *Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659,
23 666, fn. 2 [taking judicial notice of settlement agreements where “there is and can be no factual dispute
24 concerning the contents of the agreements”].)

25 **Exhibit 4**

26 **Exhibit 4** is a true and correct copy of the Report of Examination of CIC as of December 31,
27 2017, conducted by CDI and filed on May 17, 2019.

28

1 **Exhibit 4** is relevant because it shows that CDI determined that CIC and AUCRA did not
2 adhere to the August 25, 2016, Stipulated Consent between CDI, CIC, and AUCRA.

3 The Court may take judicial notice of **Exhibit 4** because it is an official act of an executive
4 department of the State of California. (Evid. Code, § 452, subd. (c); *Fowler, supra*, 42 Cal.App.4th at p.
5 1750; *United Parcel Service Wage & Hour Cases, supra*, 190 Cal.App.4th at p. 1011; *Wolski, supra*,
6 127 Cal.App.4th at p. 356.) Moreover, the Report of Examination of CIC is judicially noticeable
7 because it is publicly available on the Commissioner’s website, not reasonably subject to dispute, and is
8 capable of immediate and accurate determination by resort to sources of reasonably indisputable
9 accuracy. (Evid. Code, § 452, subd. (h).)

10 **Exhibit 5**

11 **Exhibit 5** is a true and correct copy of CDI’s Letter to Jeffrey A. Silver, general counsel of CIC,
12 sent on September 13, 2019.

13 **Exhibit 5** is relevant because it reflects CDI’s concerns and issues with Menzies’ Form A
14 Application that remain at issue in this Conservation. Specifically, it shows that CDI sought to obtain
15 from Menzies additional information that would address CDI’s concerns regarding the protection of
16 policyholders if Menzies acquired full indirect control of CIC from Berkshire Hathaway, Inc., before it
17 could approve the proposed transaction. It also indicates that CDI sought a plan for strengthening CIC’s
18 internal controls post-sale, after its 2018 investigation had assessed concerns regarding CIC’s weak
19 corporate governance and internal controls.

20 The Court may take judicial notice of **Exhibit 5** because it is an official act of an executive
21 department of the State of California. (Evid. Code, § 452, subd. (c); *Friends of Shingle Springs*
22 *Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1484 [taking judicial notice of
23 letter from Secretary of State to regulated entity].) The letter is also judicially noticeable under
24 Evidence Code section 452, subdivision (d), which provides that judicial notice may be taken of
25 records of “any court of this state,” because CIC has filed the letter in the First District Court of Appeal
26 in *California Insurance Company v. Superior Court for the County of San Mateo*, Case No. A161049,
27 in Volume 1 of its Appendix.¹

28 ¹ CDI’s Form A communications with applicants are confidential under Insurance Code,

1 **Exhibit 6**

2 **Exhibit 6** is a true and correct copy of CDI’s Letter to Jeffrey A. Silver, general counsel of CIC,
3 sent on September 27, 2019.

4 **Exhibit 6** is relevant because it reflects CDI’s concerns and issues with Menzies’ Form A
5 Application that remain at issue in this Conservation. Specifically, it shows that CDI indicated to
6 Menzies that it could not complete its review of the Form A Application while “[n]umerous questions
7 still exist concerning the pending litigation, the potential liability and financial impact that it will have
8 upon the insurer.”

9 The Court may take judicial notice of **Exhibit 6** because it is an official act of an executive
10 department of the State of California. (Evid. Code, § 452, subd. (c); *Friends of Shingle Springs*
11 *Interchange, Inc., supra*, 200 Cal.App.4th at p. 1484.) The letter is also judicially noticeable under
12 Evidence Code section 452, subdivision (d), which provides that judicial notice may be taken of
13 records of “any court of this state,” because CIC has filed the letter in the First District Court of Appeal
14 in *California Insurance Company v. Superior Court for the County of San Mateo*, Case No. A161049,
15 in Volume 1 of its Appendix.

16 **Exhibit 7**

17 **Exhibit 7** is a true and correct copy of Continental Indemnity Company’s (Continental) Q2
18 Quarterly Statement as of June 30, 2020, filed with CDI.

19 **Exhibit 7** is relevant because it shows that Continental’s most recent quarterly financial
20 statement indicates that Continental has multiple directors—Steven Menzies and Jeffrey Silver—in
21 common with CIC, AUI, and AUCRA. Their common leadership is relevant to the terms under which
22 the Conservator would allow Continental to assume CIC’s portfolio of policies.

23 The Court may take judicial notice of the names of Continental’s directors because they are
24 publicly available, not reasonably subject to dispute, and capable of immediate and accurate
25 determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h);

26 _____
27 section 1215.8. However, on October 2, 2020, CIC made Exhibits 5 and 6 public by filing them
28 unredacted with the Court of Appeal in connection with its petition for interlocutory review of two of
this Court’s rulings.

1 *In re Marriage of Oliverrez* (2015) 238 Cal.App.4th 1242, 1249 [taking judicial notice of the fact a
2 judge was listed as an active judge on county court’s website].)

3 Moreover, the Court may take judicial notice because Continental’s Q2 Quarterly Statement is
4 publicly filed, meaning it is publicly available information, not reasonably subject to dispute, and
5 capable of immediate and accurate determination by resort to sources of reasonably indisputable
6 accuracy. (Evid. Code, § 452, subd. (h); *Apple Inc. v. Superior Court* (2017) 18 Cal.App.5th 222, 242
7 [taking judicial notice of a company’s filings with the SEC because there is no factual dispute
8 concerning the matter to be noticed].)

9 **Exhibit 8**

10 **Exhibit 8** is a true and correct copy of the October 16, 2019, press release published by AUI
11 titled “*Applied Underwriters Founder, Steve Menzies, Acquires Insurance Companies from Berkshire*
12 *Hathaway in \$920MM Transaction.*”

13 **Exhibit 8** is relevant because it indicates that Menzies completed his acquisition of AUI and its
14 subsidiary North American Casualty Co. (NAC), of which CIC is a subsidiary, from Berkshire
15 Hathaway, Inc. on or before October 16, 2019.

16 The Court may take judicial notice of **Exhibit 8** because the press release is publicly available,
17 not reasonably subject to dispute, and is capable of immediate and accurate determination by resort to
18 sources of reasonably indisputable accuracy. (Evid. Code, § 452, subd. (h); *In re Marriage of Oliverrez*,
19 *supra*, 238 Cal.App.4th at p. 1249 [taking judicial notice of the fact a judge was listed as an active
20 judge on county court’s website]; *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743,
21 761 [taking judicial notice of an agreement published to the public that was not shown to be subject to
22 reasonable dispute].)

23 **Exhibit 9**

24 **Exhibit 9** is a true and correct copy of the Brief of Amicus Curiae the California Insurance
25 Commissioner Regarding Defendant’s Motion to Join Third Parties in a Cross-Complaint or to Stay the
26 Action in *Applied Underwriters, Inc. v. O’Connell Landscape Maintenance, Inc.* (C.D. Cal., July 21,
27 2020, No. 8:20-cv-00441-DOC).

28 **Exhibit 9** is relevant because it shows that CIC’s pre-conservation management continued to

1 initiate litigation against policyholders during the Conservation in the name of AUI. **Exhibit 9** is also
2 relevant because it shows the intent of the Commissioner acting as Conservator of CIC to ensure that
3 cases involving CIC and its affiliates were uniformly stayed pursuant to Paragraph 17 of the
4 Conservation Order, in order to ensure equitable treatment among litigants and ensure preservation of
5 the status quo in all cases involving EquityComp while the Conservator worked towards a rehabilitation
6 plan.

7 The Court may take judicial notice of **Exhibit 9** because it is a court record. (See Evid. Code,
8 § 452, subd. (d) [allowing judicial notice of records of “any court of this state”]; *Kilroy v. State of*
9 *California* (2004) 119 Cal.App.4th 140, 145 [“The court may in its discretion take judicial notice of
10 any court record in the United States.”].)

11 **Exhibit 10**

12 **Exhibit 10** is a true and correct copy of an order of the United States District Court for the
13 Central District of California staying *Applied Underwriters, Inc. v. O’Connell Landscape Maintenance,*
14 *Inc.* (C.D. Cal., September 10, 2020, No. 8:20-cv-00441-DOC) in accordance with paragraph 17 of the
15 Conservation Order.

16 **Exhibit 10** is relevant because it shows the determination of a federal court that a stay of
17 litigation brought by AUI against a policyholder was necessary to avoid interference with the
18 Commissioner’s Conservation of CIC.

19 The Court may take judicial notice of **Exhibit 10** because it is a court record. (See Evid. Code,
20 § 452, subd. (d) [allowing judicial notice of records of “any court of this state”]; *Kilroy, supra,*
21 *Cal.App.4th* at p. 145 [“The court may in its discretion take judicial notice of
22 any court record in the United States.”].)
23
24
25
26
27
28

1 Dated: October 19, 2020

Respectfully submitted,

2 STRUMWASSER & WOOCHEER LLP

3 Michael J. Strumwasser

4 Dale K. Larson

5 Caroline Chiappetti

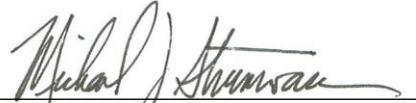
6 Julia Michel

7 ORRICK, HERRINGTON & SUTCLIFFE LLP

8 Cynthia J. Larsen

9 Justin Giovannettone

10 By



11 Michael J. Strumwasser

12 *Attorneys for Applicant Insurance Commissioner*
13 *of the State of California and Conservator for*
14 *California Insurance Company*

Exhibit 1

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of:

SHASTA LINEN SUPPLY, INC.

Appellant,

From the Decision of the

CALIFORNIA INSURANCE COMPANY,

Respondent.

File AHB-WCA-14-31

110

FILED
JUN 22 2016
ADMINISTRATIVE HEARING BUREAU

DECISION & ORDER

I. Introduction

Shasta Linen Supply, Inc. (Shasta Linen) appeals California Insurance Company's (CIC) decision rejecting Shasta Linen's claims that CIC failed to adhere to its rate filings and sold an unfiled and unapproved insurance program titled EquityComp.

For the reasons set forth below, the Insurance Commissioner of the State of California ("Insurance Commissioner") finds that CIC's EquityComp program and the accompanying Reinsurance Participation Agreement (RPA) constitute a misapplication of the filed rates of CIC in violation of California Insurance Code section 11737. Further, the Commissioner finds that CIC's EquityComp program and the accompanying RPA constitute a collateral agreement pursuant to California Code of Regulations, title 10, section 2268, and 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.

II. Statement of Issues

1. Does CIC's EquityComp program constitute a misapplication of the filed rates of CIC in violation of California Insurance Code section 11737?

2. Does CIC's EquityComp program's RPA constitute a collateral agreement modifying the rates and obligations of either the insured or insurer, and is it void as a matter of law since the RPA was not filed with the Workers' Compensation Insurance Rating Bureau and the Department of Insurance before its use in the State of California, pursuant to Insurance Code section 11658 and California Code of Regulations, title 10, sections 2268 and 2218?

III. Contentions of the Parties

Shasta Linen contends CIC violated numerous Insurance Code provisions, as well as the California Code of Regulations, by failing to file the EquityComp program and the RPA with the Workers' Compensation Insurance Rating Bureau (WCIRB)¹ and the Insurance Commissioner. Specifically, Shasta Linen asserts the RPA constitutes a collateral agreement pursuant to California Code of Regulations, title 10, sections 2268 and 2218, and as such must be filed and approved by the Insurance Commissioner prior to use.² Shasta Linen argues CIC's failure to file the RPA violates Insurance Code sections 11658 and 11735, as well as Part 2, Section V of the Miscellaneous Regulations for the Recording and Reporting of Data.³ Shasta Linen also contends CIC violated Insurance Code section 381 by failing to specify, in Shasta Linen's workers' compensation insurance policy, the basis and rates upon which the final premium is to

¹ The WCIRB is a rating organization licensed by the Insurance Commissioner under Insurance Code sections 11750 et seq. to assist the Commissioner in the development and administration of workers' compensation insurance classification and rating systems. The WCIRB serves as the Commissioner's designated statistical agent for the purpose of gathering and compiling experience data developed under California's workers' compensation and employers' liability insurance policies. (Ins. Code § 11751.5).

² Appellant's Post-hearing Opening Brief, 4:7-17.

³ Provisions of the Miscellaneous Regulations for the Recording and Reporting Data are part of the Insurance Commissioner's Regulations, codified in California Code of Regulations, title 10, section 2354.

be determined and paid.⁴ Lastly, Shasta Linen asserts CIC violated Insurance Code section 11658.5, by failing to inform Shasta Linen of its right to negotiate the policy's dispute resolution provisions and by failing to secure written receipt of such disclosure prior to issuance of the policy.⁵ Shasta Linen urges the Commissioner to bar CIC from enforcing the terms of EquityComp and the RPA, including the mandatory arbitration provisions. Shasta Linen also requests the Commissioner order CIC to return all monies contributed to Shasta Linen's cell account, except for those used to settle workers' compensation claims, as well as all fees collected and disbursed to Applied Underwriters, Inc. and Applied Underwriters Captive Risk Assurance Company.⁶

CIC initially asserts the California Department of Insurance (CDI) lacks jurisdiction over Shasta Linen's appeal. Specifically, CIC argues: (1) appeals filed under Insurance Code section 11737, subdivision (f) may only determine "whether CIC has properly applied its [rate] filings to determine how much premium to charge" and may not address the potential illegality of the rate filing;⁷ (2) the RPA is between AUCRA and Shasta Linen, and relief in this forum is not possible;⁸ (3) whether the RPA is an unlawful collateral agreement in violation of the Insurance Commissioner's Regulations is beyond the scope of the CDI's jurisdiction;⁹ and (4) only the Insurance Commissioner may initiate a hearing to disapprove an unfiled rate.¹⁰

With regard to the merits of Shasta Linen's claims, CIC argues the RPA is not a collateral agreement because it does not change the cost of insurance under the CIC policy, does not impact insurance rates, and does not modify the terms of the CIC insurance policy issued to

⁴ Appellant's Post-hearing Opening Brief, 5:7-13.

⁵ Appellant's Post-hearing Opening Brief, 5:15-23.

⁶ Appellant's Post-hearing Opening Brief, 6:1-3; 26:3-12.

⁷ Respondent's Post-hearing Opening Brief, 21:13-22:7.

⁸ Respondent's Post-hearing Opening Brief, 22:8-18.

⁹ Appellant's Post-hearing Opening Brief, 23:8-14.

¹⁰ Respondent's Post-hearing Opening Brief, 23:21-24:6.

Shasta Linen.¹¹ Lastly, with regard to potential remedies, CIC contends the CDI may not void Shasta Linen's RPA. Instead, CIC argues that if the Commissioner finds that the RPA violates the Insurance Code or its applicable Regulations, the Commissioner may issue only a prospective order to cease use of the RPA, and is not permitted to void Shasta Linen's RPA.¹²

IV. Procedural History

On August 29, 2014, Shasta Linen filed an appeal with the Department of Insurance, Administrative Hearing Bureau (AHB) in response to CIC's July 31, 2014 decision rejecting Shasta Linen's Complaint and Request for Action. On September 5, 2014, the Chief Administrative Law Judge issued an Appeal Inception Notice and assigned the matter to Administrative Law Judge (ALJ) Kristin L. Rosi.

On October 31, 2014, the ALJ conducted a telephonic status conference with all parties. During the conference, the parties agreed to a discovery timetable and to the statement of the issue as identified above. The ALJ set the matter for an evidentiary hearing commencing March 9, 2015.

At the hearing, Craig E. Farmer, Esq., of Farmer, Smith & Lane, LLP, appeared on behalf of Shasta Linen. Spencer Y. Kook, Esq. and Richard De La Mora, Esq., of Hinshaw & Culbertson, LLP, appeared on behalf of CIC. The parties submitted documentary evidence and presented witnesses. The evidentiary record includes witness testimony and all exhibits admitted into evidence as identified in the parties' Exhibit Lists.

On March 17, 2015, CIC's General Counsel and co-author of the EquityComp program, Jeffrey Silver, invoked the attorney-client privilege and refused to answer any questions regarding EquityComp's creation or the RPA's terms. In order to create a more complete

¹¹ Respondent's Post-hearing Opening Brief, 26:1-28:6; 30:15-31:7; 37:19-41:4.

¹² Respondent's Post-hearing Opening Brief, 41:6-42:3.

evidentiary record, on March 23, 2015, the ALJ convened a conference to discuss the presentation of an additional witness. During this conference, CIC agreed to present a witness able to testify about the EquityComp program and the RPA. In response to a joint request by the parties, on March 26, 2015, the ALJ issued an Order continuing the evidentiary hearing to May 21 and May 22, 2015.

On April 30, 2015, the ALJ ordered additional evidence from both parties. Specifically, the ALJ ordered copies of CIC's Annual Statements, the total number of EquityComp participants, the total number of EquityComp participants who received refunds at the conclusion of the program, a list of complaints and grievances filed regarding the program, the percentage of EquityComp participants with open claims at the conclusion of the program, and an EquityComp loss ratio sensitivity analysis for 2013 and 2014. The ALJ also ordered copies of Shasta Linen's corporate tax returns, the total amounts paid in workers' compensation premium and losses for policy years 2013 and 2014, and the most recent experience rating modification.

On May 8, 2015, CIC filed an Objection and Request for a Continuance in response to the ALJ's Order for Additional Evidence. CIC objected to the production of additional evidence arguing: (1) the ALJ lacks authority and jurisdiction to issue such an order; (2) the information is irrelevant; and (3) the information is confidential to third-party participants.

On May 18, 2015, the ALJ overruled CIC's objections and ordered CIC to comply with the April 30, 2015 Order. On May 19, 2015, CIC informed the ALJ it would not comply with the ALJ's Additional Evidence Order. At the hearing on May 21, 2015, CIC called Patrick Watson to testify in response to the ALJ's request for a person most knowledgeable regarding EquityComp and the RPA.

On July 24, 2015, the parties filed concurrent opening briefs and on August 10, 2015, the

parties filed their concurrent reply briefs.

On August 11, 2015, CIC requested the ALJ take official notice of the Summary Denial issued in *Sportsmobile West, Inc.*, AHB-WCA-06-7 and the Notice of Hearing and Order to Show Cause filed by the CDI against Zurich American Insurance Company of Illinois on February 27, 2012. On that same date, CIC also requested permission to file a supplemental declaration by Ellen Gardiner, pursuant to California Code of Regulations, title 10, section 2509.66. On August 24, 2015, Shasta Linen filed objections to CIC's additional evidence and request for official notice. On September 16, 2015, the ALJ rejected CIC's request to file additional evidence. On that same date, the ALJ granted, in part, and rejected, in part, various requests for official notice and ordered the record closed.

On October 29, 2015, the ALJ reopened the record to accept the parties' executed Stipulated Protective Order. By that same Order, the ALJ reclosed the record.

On November 20, 2015, the ALJ submitted her Proposed Decision and Order, which was adopted by Order of the Commissioner on January 21, 2016.

CIC filed its Petition of Reconsideration dated February 5, 2016, and Shasta Linen also filed a Petition for Reconsideration dated February 17, 2016.

On March 22, 2016, the Insurance Commissioner issued an Order Granting Reconsideration and Notice of Non-Adoption of Proposed Decision.

V. Findings of Fact

A review of the record found, by a preponderance of evidence, the following material facts, that are adopted herein.¹³

¹³ References to the transcript of the evidentiary hearing are "Tr." followed by the page number(s) and, where line references are used, a ":" followed by the line number(s). Thus, a reference to Tr. 35:14-18 is to page 35, lines 14-18 of the transcript. Exhibits are referred to by the numbers assigned to them in the parties' Exhibit Lists.

A. Shasta Linen

1. Company History

Shasta Linen is a privately-held family-owned California corporation in the linen rental business.¹⁴ Founded in 1948, Shasta Linen originally operated as a laundry and dry cleaning service. In the 1950s, the company ceased operating as a laundry and dry cleaning service and entered into the linen rental business. Shasta Linen's customers include restaurants, hotels, surgery centers and doctor's offices.¹⁵

Shasta Linen employees pick up soiled linens and garments from their customers and transport them back to Shasta's Sacramento laundry facility. There, the linens are counted, sorted, washed, dried and pressed.¹⁶ Shasta Linen employees then return the cleaned linens to the customers. The laundry facility employs approximately 63 people who work five days a week.¹⁷

Prior to December 2014, Shasta Linen had two owners; Tom Hammer, President, and Gordon Macauley, Vice-President. Mr. Hammer and Mr. Macauley each owned 50% of the corporation. In December 2014, Mr. Hammer passed away and his 50% share was divided between his daughter, Noel Richardson, the current President of Shasta Linen, and his surviving spouse, Phyllis Hammer. Ms. Richardson received 20% of the corporate stock and Mrs. Hammer received the remaining 30%.¹⁸

2. 2009 Purchase of EquityComp Program

For decades, Shasta Linen employed Sacramento Valley Insurance Services (SVIS) as its

¹⁴ Tr. 106:23-107:2.

¹⁵ Tr. 107:12-16.

¹⁶ Tr. 108:5-11.

¹⁷ Tr. 108:23-25.

¹⁸ Tr. 100:7-9.

insurance broker.¹⁹ In each of these years, SVIS secured Shasta Linen's workers' compensation insurance through a guaranteed cost policy. From 2002 through 2008, Shasta Linen's experience modification ranged from 66% to 80%, demonstrating that Shasta Linen had a more favorable loss experience than other businesses in its industry.²⁰

In 2009, Shasta Linen anticipated an increase in its experience modification factor due to several earlier claims. In late 2009, Shasta Linen's broker presented the EquityComp program as an alternative to the traditional guaranteed cost policy and as a means to counter the effects of an increase in experience modification. At that same time, the broker presented quotes from other insurers offering guaranteed cost policies.²¹ The quotes were presented in descending cost order with Zenith Insurance Company quoting an annual premium of \$446,541 and Insurance Company of the West (ICW) quoting an annual premium of \$301,091. The broker placed EquityComp on the line below ICW, with a note that stated "see attached."²² Attached to the rate quotes was a Program Proposal and a Rate Quote from Applied Underwriters' ("AU") EquityComp program. The EquityComp rate quote indicated a minimum single-year premium of \$107,541 and a maximum premium of \$322,623.²³ The broker did not present Shasta Linen with a copy of the Reinsurance Participation Agreement nor had the broker read the RPA at the

¹⁹ SVIS was subsequently acquired by Pan American Underwriters, a wholly-owned subsidiary of Ascension Insurance Services. (Exh. 271-9).

²⁰ Exh. 65. The WCIRB promulgates experience ratings for each qualified employer pursuant to the rules set forth in the California Workers' Compensation Experience Rating Plan (ERP). Experience rating utilizes a policyholder's past claims experience to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification. (Ins. Code § 11730, subd. (c)). The rules governing the reporting of loss data are found in the California Workers' Compensation Uniform Statistical Reporting Plan (USRP). Provisions of the ERP and USRP, including the Standard Classification System, are part of the Insurance Commissioner's regulations, codified at title 10, California Code of Regulations, section 2352.1.

²¹ Exh. 271-14; Exh 272-22.

²² Exh. 272-22. The Commissioner notes for the record that the broker named Applied Underwriters as the insurance carrier. The broker made no mention of CIC anywhere in his presentation.

²³ Exh. 201-3.

time he presented the program.²⁴

After reviewing the premium and claim amount tables in AU's marketing materials, Shasta Linen agreed to enroll in the three-year EquityComp program.²⁵ In December 2012, the final month of the three-year program, Shasta Linen received a monthly bill for \$77,593.66.²⁶ By that time, Shasta Linen had already paid \$934,466.60 in EquityComp costs over the three years and its captive cell held approximately \$200,000.²⁷ In January 2013, one month after the program ended and the workers' compensation insurance policy expired, Shasta Linen received a bill for an additional \$166,619.75.²⁸ Shasta Linen has not paid the additional \$244,213.31 arguing that such payments exceed the guaranteed cost policy's quoted amount, were not fully explained and are inconsistent with the guaranteed cost policy.²⁹ CIC continues to compound interest on these unpaid charges each month. In January 2014, CIC calculated Shasta Linen's final payment at \$290,524.58.³⁰

B. CIC and Its Affiliated Entities

1. Organizational Structure

CIC California Insurance Company is a licensed property and casualty insurance company, domiciled in California and licensed to transact business in 26 states. CIC is wholly-owned by North American Casualty Company, a non-insurer, which is in turn wholly-owned by Applied Underwriters, Inc. (AU), a Nebraska corporation.³¹ AU is an indirect subsidiary of Berkshire Hathaway Inc. AU is also the parent company for Applied Underwriters Captive Risk

²⁴ Exh. 271-26. The broker had never enrolled a client in EquityComp prior to enrolling Shasta Linen.

²⁵ The guaranteed cost policy had an effective date of January 1, 2010. Shasta Linen did not enroll in EquityComp until January 5, 2010.

²⁶ Exh. 213-23.

²⁷ Tr. 819:8-11; Tr. 232:3-7; Exh. 31-2.

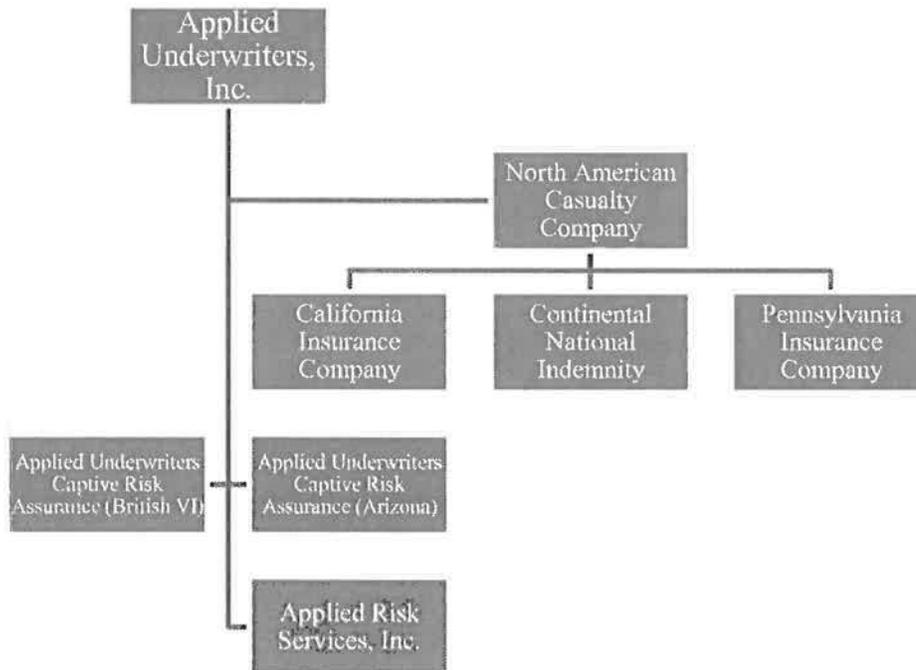
²⁸ Exh. 214-1.

²⁹ $\$77,593.66 + \$166,619.75 = \$244,213.31$.

³⁰ Exh. 214-16.

³¹ Exh. 234-5; Tr. 1150:6-16.

Assurance Company, BVI (AUCRA) and Applied Risk Services (ARS). The following flow chart provides the organizational structure relevant to this proceeding:



AU is a financial service corporation that provides payroll processing services and underwrites workers' compensation insurance through its affiliated insurance companies to small and medium-sized employers. AU manages all of CIC's underwriting, investment, administrative, actuarial and claim services through a Management Services Agreement.³² AU also administers the EquityComp program on behalf of CIC. All EquityComp documents presented and signed by Shasta Linen bear the name and logo of Applied Underwriters, Inc. EquityComp is a registered trademark of AU and all AU employees work on CIC issues.³³

AUCRA is an insurance company organized under the law of the British Virgin Islands and domiciled in Iowa.³⁴ AUCRA's sole purpose in the Berkshire Hathaway family is to serve

³² Exh. 274-7.

³³ Exh. 203-1; Tr. 706:23-707:4.

³⁴ Tr. 620:2-3.

as CIC's reinsurance arm.³⁵ It does not reinsure any other entities or perform any other functions.

Applied Risk Services (ARS) is the billing agent for EquityComp and serves as CIC's service agent.³⁶ Under an Agency Agreement, ARS receives premium from policyholders and pays commissions to brokers on behalf of CIC. For this service, CIC reimburses ARS for the paid commissions. ARS and CIC are also parties to a Claims Services Agreement wherein ARS pays losses and loss adjustment expenses on CIC policies.³⁷ CIC reimburses ARS for all losses and allocated loss adjustment expenses incurred on CIC claims.

The Boards of Directors for CIC, AU, and AUCRA are identical in composition.³⁸ Mr. Silver, CIC's and AU's General Counsel, serves on each of these Boards, as well as on the Board of ARS. Ms. Gardiner, AU's Chief Actuary, is an officer of all the entities involved in this litigation, namely, AU, CIC and AUCRA.

CIC is also a party to an intercompany pooling agreement³⁹ with its affiliated Berkshire Hathaway carriers. In 2010, the pooling agreement included CIC and Continental National Indemnity Company (CNI), with CIC assuming an 85% share and CNI assuming the remaining 15%.⁴⁰ In 2011, the pooling agreement expanded to include Illinois Insurance Company (IIC). CIC remained the lead company with an 80% share, while CNI assumed 15% and IIC assumed 5%. In 2013, affiliate Pennsylvania Insurance (PIC) was added to the pooling arrangement. As a result, CIC's share reduced to 75%.

³⁵ Tr. 1154:3-15.

³⁶ Tr. 1154:17-23; Exh. 234-6.

³⁷ Exh. 274-8.

³⁸ Tr. 1153:2-4; Tr. 863:1-3.

³⁹ In pooling arrangements, entities share exposures to possible loss. Casualty Actuarial Society, Foundations of Casualty Actuarial Science, (4th ed. 2001), pp. 49-50.

⁴⁰ CIC's 2010 Annual Statement, Management Discussion and Analysis. CIC's Annual Statements are available on the California Department of Insurance's website. The Commissioner takes Official Notice of CIC's Annual Statements from 2008 through 2014.

2. CIC's Workers' Compensation Policies

CIC offers workers' compensation insurance through a guaranteed cost policy and a profit-sharing program. Each program is relevant to the underlying issue and described below.

a. Guaranteed Cost Policy

A great majority of California employers receive workers' compensation insurance coverage through guaranteed cost policies.⁴¹ Under a guaranteed cost policy, the insured company pays a fixed annual premium for the policy term, regardless of subsequent loss experience. The fixed premium is the sum of the average losses and the basic fees. Average losses take into account the base rate for each classification assigned to the policy and the employer's experience modification factor. The fees are the estimated costs of providing the insurance; that is sales, underwriting, profit and other fixed costs. Thus, a company with average losses of \$500,000, may be charged \$750,000 in premium; \$500,000 to cover expected loss payments and \$250,000 in basic fees.

Every guaranteed cost policy must adhere to the Insurance Code and its applicable Regulations. All rates charged in a guaranteed cost policy must be filed with the WCIRB and approved by the Insurance Commissioner prior to use. In addition, every guaranteed cost policy must contain statutorily-required dispute resolution and cancellation language.⁴²

CIC's guaranteed cost policies contain standard language approved by the Insurance Commissioner. For example, each policy states CIC's rates are filed with the Commissioner and open to public inspection. CIC warrants that it adheres to a single uniform experience rating plan and applies such experience rating to each policy.⁴³ In addition, CIC's guaranteed cost

⁴¹ Tr. 310:4-6.

⁴² Ins. Code § 11650 et seq.

⁴³ Exh. 209-17.

policies notify employers of the dispute resolution process provided under California Insurance Code section 11737, subdivision (f). CIC's Policyholder Notice provides that:

If you are aggrieved by our decision adopting a change in a classification assignment that results in increased premium, or by the application of our rating system to your workers' compensation insurance, you may dispute these matters with us. If you are dissatisfied with the outcome of the initial dispute with us, you may send us a written Complaint and Request for Action as outlined below.

You may send us a written Complaint and Request for Action requesting that we reconsider a change in a classification assignment that results in an increased premium and/or requesting that we review the manner in which our rating system has been applied in connection with the insurance afforded or offered you. Written Complaints and Requests for Action should be forwarded to: California Insurance Company, P.O. Box 281900, San Francisco, CA 94128-1900, Phone No. (877) 234-4450; Fax No. (415) 508-0374.⁴⁴

Pursuant to California Code of Regulations, title 10, section 2509.44, CIC must acknowledge the complaint within 30 days and indicate whether the complaint will be reviewed. If CIC agrees to review the complaint, it must issue a decision within 60 days of the acknowledgment letter. An insured dissatisfied with CIC's decision may appeal to the Insurance Commissioner. The policy's dispute resolution provision does not provide for binding arbitration or any other alternative dispute methods.

CIC's guaranteed cost policies also include a cancellation provision and a "Short Rate Cancellation" Notice, as required by the Insurance Code.⁴⁵ Part 5, subsection E of the CIC policy provides that following cancellation, the final premium will be determined as follows:

1. If we cancel, final premium will be calculated pro rata based on the time the policy was in force. Final premium will not be less than the pro rata share of the minimum premium.

⁴⁴ Exh. 208-15.

⁴⁵ Exh. 208-93; See also Ins. Code § 481, subd. (c).

2. If you cancel, the final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate calculation table and procedure. Final premium will not be less than the minimum premium.⁴⁶

The Short Rate penalty is a percentage of the full-term premium based on the number of days of coverage in the canceled policy.⁴⁷ The Short Rate Calculation Table in CIC's guaranteed cost policies quotes subsection E and provides a formula for determining the early cancellation penalty. For example, an employer who pays an annual premium of \$300,000 and cancels its policy after 100 days will owe \$114,000; \$82,192 in actual earned premium and \$31,808 in penalties.⁴⁸ After expiration of the policy, an employer may change insurance carriers without penalty.

CIC's guaranteed cost policies also set a minimum and estimated annual premium based on an employer's payroll estimates, experience modification factor, and CIC's rates per \$100 of payroll for each applicable classification. After estimated taxes and fees, the guaranteed cost policies provide an employer with an annual premium estimate. The final premium due is calculated using actual payroll amounts assigned to a specific classification of the policy and the employer's experience modification factor. The final premium is not impacted by the actual losses incurred during that same policy period.

b. The Guaranteed Cost Policies are the Sole Insurance Agreements

The guaranteed cost policies issued by CIC in this matter all contain the same language that the policies are the sole insuring agreements between CIC and Shasta Linen and go on to state that, "The only agreements relating to this insurance are stated in this policy. The terms of

⁴⁶ Exh. 208-87.

⁴⁷ The short-rate penalty discourages employers from switching insurers mid-policy year.

⁴⁸ Exh. 208-20 to 208-22.

this policy may not be changed or waived except by endorsement issued by us to be part of this policy.”⁴⁹

In addition, a standard form Policy Amendatory Endorsement—California is attached to each of the policies and state, “It is further agreed that this policy, including all endorsements forming a part thereof, constitutes the entire contract of insurance. No condition, provision, agreement, or understanding not set forth in this policy or such endorsements shall affect such contract or rights, duties, or privileges arising therefrom.”⁵⁰ [Emphasis added.] No endorsement is attached, endorsed, or included to the policies adding any provisions or changes relating to the RPA.

Finally, the policies each state on page five, under Part Six—Conditions, C. Transfer of Your Rights and Duties: “Your rights or duties under this policy may not be transferred without our written consent.”

c. EquityComp

In conjunction with AU, CIC offers a “profit-sharing” loss sensitive program titled EquityComp. Loss sensitive programs are ones in which the premium for the policy year is impacted by the actual cost of claims incurred during the policy year.⁵¹ By definition, loss sensitive plans are “profit-sharing.”⁵² Generally, carriers market loss sensitive programs exclusively to large employers.⁵³ 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. Also, given the sophistication of larger companies, these employers are

⁴⁹ Exhibits 208, 209, and 210.

⁵⁰ *Ibid.*

⁵¹ Tr. 595:9-14.

⁵² Tr. 604:9-14.

⁵³ Tr. 310:10-16; see also ALJ Exh. 1.

better able to evaluate the cost effectiveness of the types of insurance policies available.⁵⁴ In essence, large employers are more prudent shoppers and can evaluate whether their costs match with an insurer's quote.⁵⁵ Loss sensitive programs are issued as endorsements to guaranteed cost policies and require the Insurance Commissioner's approval.⁵⁶

EquityComp's profit-sharing plan is reflected in a Reinsurance Participation Agreement.⁵⁷ Neither CIC nor its affiliated entities filed or sought approval for the RPA or the EquityComp program.⁵⁸ The EquityComp program, and its accompanying Reinsurance Participation Agreement, is discussed in Section C, *infra*.

3. Financial Statements, Ratios and Market Share

CIC is primarily a workers' compensation insurance carrier. Approximately 98 percent of its book of business is written in California workers' compensation.⁵⁹ EquityComp currently generates 80 percent of CIC's policy premium.⁶⁰ That percentage has steadily increased since the program's inception in 2008.

- In 2009, CIC's net earned premium totaled \$71,512,000 with incurred losses and loss adjustment expenses (LAE) equaling \$55,615,000.⁶¹ This resulted in a net loss ratio of 77.7% and a combined ratio of 109.7%.⁶² Accordingly, CIC had a negative net income of \$4,419,116.⁶³

⁵⁴ Tr. 310:17-23.

⁵⁵ Tr. 311:4-11.

⁵⁶ Tr. 875:2-4; An endorsement to an insurance policy "is an amendment to or modification of an existing policy of insurance" that "may alter or vary any term or condition of the policy" and that "may be attached to a policy at its inception or added during the term of the policy." *Adams v. Explorer Ins. Co.* (2003) 107 Cal.App.4th 438.

⁵⁷ Tr. 621:2-16.

⁵⁸ Tr. 1169:18-20.

⁵⁹ Tr. 1155:24-1156:4.

⁶⁰ Tr. 865:19-22. Mr. Silver's testimony contradicted that of Ms. Gardiner on this issue. The Commissioner credits Ms. Gardiner's testimony on this issue, as Ms. Gardiner serves as the chief underwriter for AU and CIC.

⁶¹ CIC's 2010 Annual Statement, Statement of Income.

⁶² The net loss ratio is the sum of incurred losses and incurred loss adjustment expenses divided by earned premium. These amounts are found on lines 1 through 3 of CIC's Statement of Income.

⁶³ CIC's 2010 Annual Statement, Five-Year Historical Data.

- In 2010, CIC's net earned premium increased to \$87,444,676, while its incurred losses and LAE dramatically decreased to \$17,151,456. As a result of the significant decrease in losses, CIC net loss ratio dropped to 19.6% and its combined ratio declined to 54%.⁶⁴ This resulted in net income of \$28,516,390.
- In 2011, CIC's net earned premium rose 34 percent to \$117,505,149 with incurred losses and LAE's of \$34,725,831. That year, CIC's net loss ratio equaled 29.5% and its combined loss ratio equaled 55.7%.⁶⁵ CIC's net income for 2011 also increased to \$36,573,942.⁶⁶
- In 2012, CIC saw a 16 percent earned premium increase with net earned premium totaling \$135,598,473. CIC's losses and LAE equaled \$17,116,000, for a net loss ratio of 12.6% and a combined ratio of 43.2%.⁶⁷ CIC's net income in 2012 equaled \$47,582,838.
- In 2013, CIC's net earned premium increased another 37 percent to \$186,034,034. CIC's losses and LAE totaled \$59,854,816, for a net loss ratio of 32.1%. After underwriting expenses, CIC combined ratio equaled 61.8%.⁶⁸ CIC recorded net income of \$48,928,910 for 2013.
- In 2014, CIC's net earned premium rose another 29 percent to \$240,474,973. CIC's incurred losses and LAE's for that year equaled \$72,484,214, for a net loss ratio of 30.1%.⁶⁹ CIC's combined ratio for 2014 totaled 60% and CIC reported a net income of \$65,540,948.

⁶⁴ CIC's 2010 Annual Statement, Statement of Income & Five-Year Historical Data.

⁶⁵ CIC's 2011 Annual Statement, Management's Discussion and Analysis, p. 4.

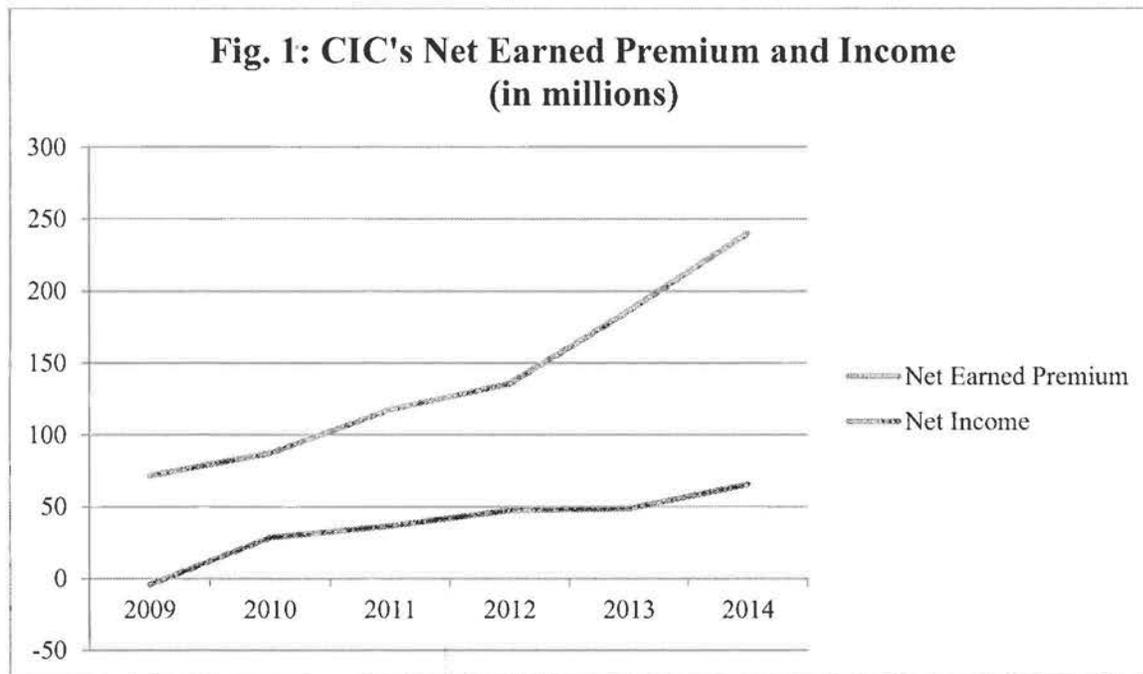
⁶⁶ CIC's 2013 Annual Statement, Five-Year Historical Data.

⁶⁷ CIC's 2012 Annual Statement, Management's Discussion and Analysis, p. 4.

⁶⁸ CIC's 2013 Annual Statement, Management's Discussion and Analysis (Amended), p. 5.

⁶⁹ CIC's 2014 Annual Statement, Management's Discussion and Analysis, p. 4.

In sum, CIC's profits since EquityComp's 2008 inception equal \$227,713,912. The following chart illustrates CIC's increase in net earned premium and net income:

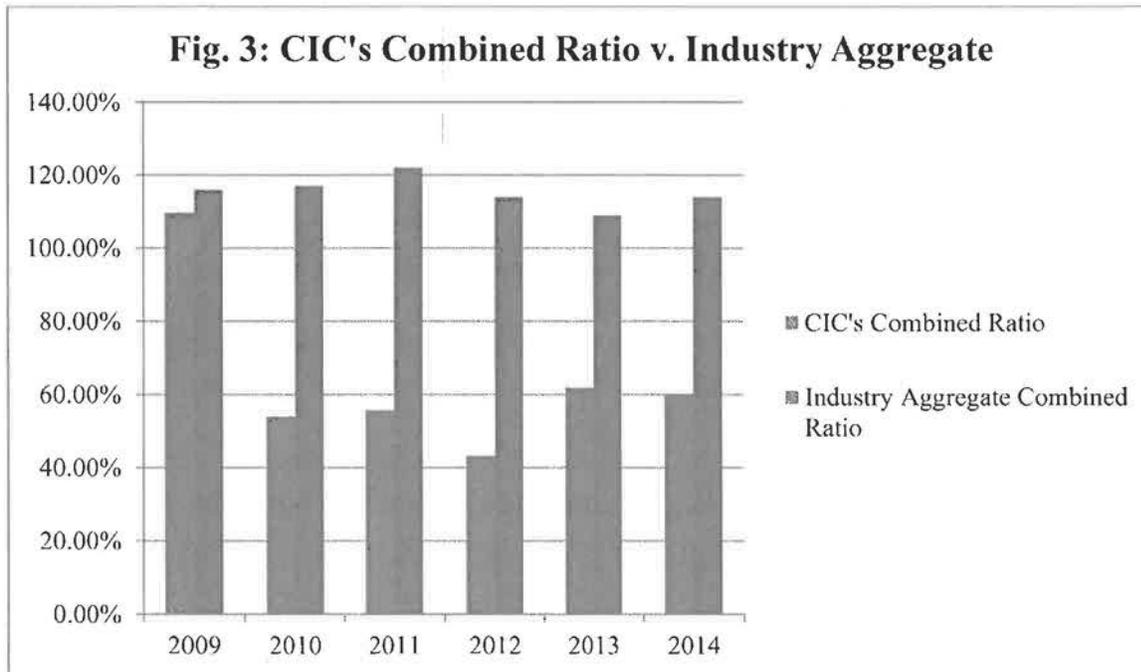
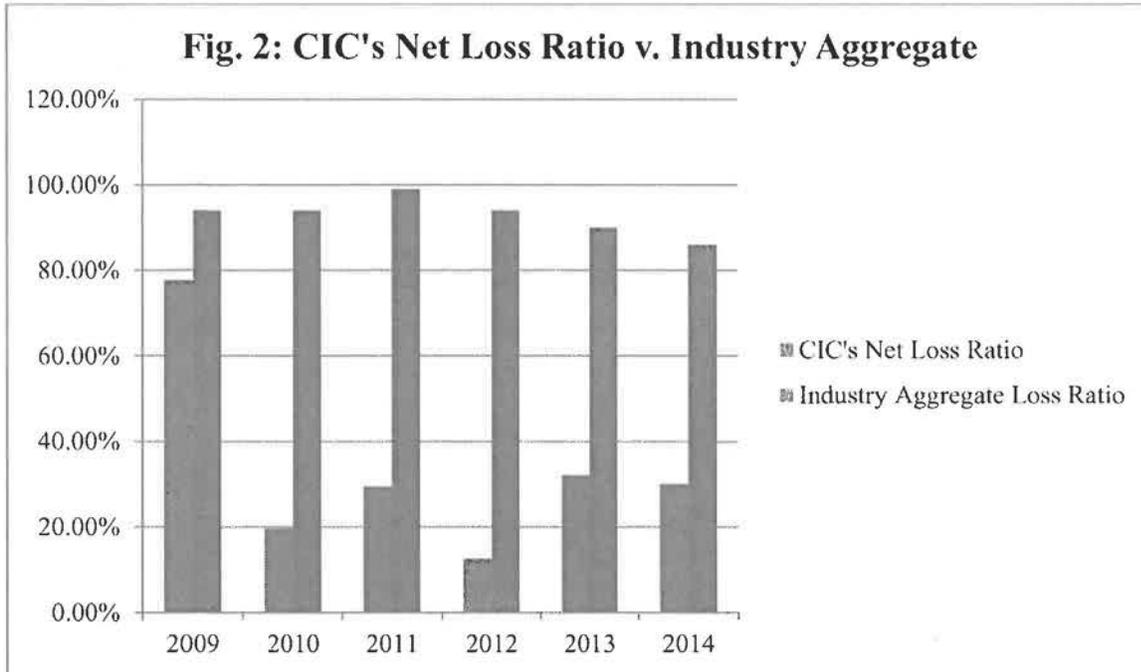


In comparison, CIC's total combined profit for the three years prior to EquityComp's 2008 inception totaled \$47,172,997.⁷⁰

From 2009 through 2014, CIC also posted significantly lower loss and combined ratios than other comparable carriers. CIC's calendar year ratios versus those of the industry as a whole are shown below:⁷¹

⁷⁰ CIC's 2010 Annual Statement, Five-Year Historical Data, p. 17.

⁷¹ WCIRB's Insurer Experience Report on December 31, 2014, released April 20, 2015. This Report is available on the WCIRB's website. The Commissioner takes Official Notice of the WCIRB's Insurer Experience Report.



In fact, CIC recorded the lowest loss ratio among the top 30 workers' compensation insurance carriers in 2013, and the lowest loss ratio among the top 15 workers' compensation carriers in

2012.⁷²

From 2008 through 2014, CIC also saw its market share increase. In 2008, prior to the inception of the EquityComp program, CIC ranked 37th in total written workers' compensation insurance premium with 0.867 percent of the market.⁷³ By 2010, CIC ranked 29th in total written premium and its market share increased to 0.963%.⁷⁴ In 2013, CIC ranked 10th in total written premium as its market share increased to 2.366%⁷⁵, and by 2014, CIC ranked 7th in total written premium with a market share of 2.92%.⁷⁶

In 2006, the CDI conducted a financial examination of CIC's management practices, assets and liabilities from 2002 through 2006.⁷⁷ The financial examination noted that CIC offers an EquityComp program to medium-sized businesses.⁷⁸ The 2006 examination also noted that EquityComp is similar to an incurred loss retrospective rating plan.⁷⁹ The report does not indicate CDI reviewed the RPA or any other EquityComp program documents. The CDI conducted a follow-up financial examination for the period of January 1, 2007 through December 31, 2009.⁸⁰ The 2009 financial examination also made a passing reference to CIC's EquityComp program, again noting the program is similar to a retrospective rating plan.⁸¹ In 2013, CDI issued yet another financial examination for CIC. The 2013 exam mentions the EquityComp program and its accompanying "Profit Sharing Plan" sold through CIC's affiliate,

⁷² 2012 & 2013 California P & C Market Share Report, Workers' Compensation Line. The Market Share Report is published by the CDI and available on the CDI's website. The Commissioner takes Official Notice of these Reports.

⁷³ 2008 California P & C Market Share Report, Workers' Compensation Line.

⁷⁴ 2010 California P & C Market Share Report, Workers' Compensation Line.

⁷⁵ 2013 California P & C Market Share Report, Workers' Compensation Line.

⁷⁶ Ms. Gardiner testified CIC's market share totaled less than 1%. (Tr. 866:15-20.) This testimony lacks credibility given the CDI's published report. In addition, CIC failed to present any documentation contradicting the CDI's calculations.

⁷⁷ Exh. 233.

⁷⁸ Ms. Gardiner testified the EquityComp program began in 2008. (Tr. 867:1-4). Ms. Gardiner's testimony is apparently inaccurate given the discussion of EquityComp in the 2006 report.

⁷⁹ Exh. 233-11.

⁸⁰ Exh. 234.

⁸¹ Exh. 234-7.

AUCRA.⁸² The 2013 Exam does not explain the “Profit Sharing Plan’s” terms nor does the report indicate CDI inspected the RPA. Lastly, in 2014, the CDI issued a Market Conduct Report regarding CIC’s operating practices. The scope of the confidential examination included a review of CIC’s rates, rating plan, forms and underwriting rules, as well as CIC’s marketing materials and active complaints.⁸³ The Market Conduct Report makes only a passing reference to EquityComp. There is no evidence CDI examiners reviewed the RPA or EquityComp materials for statutory compliance, nor did either party call witnesses to discuss these examinations.

C. The EquityComp Program

AU promotes EquityComp as a loss sensitive, profit-sharing plan appropriate for “middle market” insureds. AU began marketing this product in 2008 and since that date, the number of programs sold has increased exponentially each year. In California alone, AU writes approximately 10 new EquityComp policies per month.⁸⁴ As noted above, EquityComp comprises approximately 80 percent of CIC’s policy premium.⁸⁵

CIC has not filed the terms or rates of the RPA or EquityComp with the WCIRB or the Insurance Commissioner.

1. Trademark and Patent

On June 24, 2010, AU filed a United States Patent application for a Reinsurance Participation Plan.⁸⁶ Authored by Mr. Silver, CIC’s Chief Executive Officer Steve Menzies and three other AU employees, the application sought to patent the EquityComp/RPA concept sold to

⁸² Exh. 274-9.

⁸³ Exh. 235.

⁸⁴ Tr. 1331:10-14.

⁸⁵ CIC refused to provide the total number of EquityComp participants for each year from 2008 through 2014 despite being ordered to do so on two separate occasions.

⁸⁶ ALJ Exh. 1; Tr. 1181:5-9.

Shasta Linen, and other California employers.⁸⁷ The federal government granted the RPA patent on March 15, 2011. The “Reinsurance Participation Plan” patent application explains in detail the motivation behind the program and the terms thereof.

Under the traditional guaranteed cost policy, there is frequently a mismatch between what the insurance company feels is a fair premium and what the employer considers a fair premium.⁸⁸ This is in part because an insurer considers an employer’s average losses to be its expected losses, whereas most employers consider the median losses to be their expected losses. This dichotomy led to the development of linear retrospective rating plans.

Pricing a guaranteed cost policy is straightforward. Under a guaranteed cost policy, the insured company pays a fixed premium regardless of its subsequent loss experience during the policy term. The fixed premium is the sum of the expected average losses and the basic fees. A linear retrospective rating plan varies the premium an employer will pay based on the employer’s actual losses during a coverage period. The minimum premium covers the basic fixed fees. The premium then increases linearly with respect to actual losses until it reaches a maximum plateau. The standard equation describing the relationship between premium and actual losses in linear retrospective plans is:

$$\text{Premium} = \text{Basic Fees} + C * \text{Actual Losses, where } C \text{ is a constant Loss Conversion Factor.}$$

But only large companies with expected losses of over \$500,000 can qualify for retrospective rating plans in the United States. This rule is meant to protect small and mid-size employers who are presumably less sophisticated insurance consumers and who have less of an ability to predict their future losses.⁸⁹ In addition, until the advent of EquityComp and the RPA,

⁸⁷ Tr. 1179:10-15.

⁸⁸ ALJ Exh. 1, col. 3, lines 38-44.

⁸⁹ Tr. 310:10-23.

all retrospective plans were linear retrospective rating plans. This was due in part “to governmental and other regulatory requirements as well as computational difficulties inherent in providing premium quotes for a broad range of companies.”⁹⁰

With the invention of EquityComp and the RPA, AU altered this landscape by introducing a “non-linear retrospective premium plan for medium sized companies.”⁹¹ The non-linear retrospective premium function comprises an initial relatively steep portion, a breakpoint, a subsequently shallow portion and a plateau. Like the linear retrospective premium plan, the minimum premium covers the basic fixed fees and costs.⁹² There is a breakpoint early in the function and then a shallow increase in the curve until the premium plateaus. Because of the early breakpoint in the function, the plateau portion, i.e. the maximum premium due, can be significantly lower than the plateau on a linear retrospective plan.⁹³ AU achieves this result with the initial steep curve which results in more premium collected at lower loss levels, where most insurers will end up.⁹⁴

AU acknowledges that one of the challenges of a “fundamentally new premium structure” is that “the structure must be approved by the respective insurance departments regulating the sale of insurance.”⁹⁵ In addition, many states prohibit the sale of retrospective plans to small and medium size companies. AU’s response to this regulatory challenge is “a reinsurance based approach to providing non-linear retrospective plans to insureds that may not have the option of such a plan directly.”⁹⁶

⁹⁰ ALJ Exh. 1, column 4, lines 47-55.

⁹¹ ALJ Exh. 1, column 4, lines 62-63.

⁹² ALJ Exh. 1, column 5, lines 42-43.

⁹³ ALJ Exh. 1, column 5, lines 44-47.

⁹⁴ ALJ Exh. 1, column 5, lines 47-49.

⁹⁵ ALJ Exh. 1, column 6, lines 22-26.

⁹⁶ ALJ Exh. 1, column 6, lines 39-42.

AU attempts to achieve this compliance by introducing a “reinsurance” company into the mix. The so-called reinsurance company enters into a separate Participation Agreement with the insured whereby a credit or debit is assessed on the insured as a function of the losses it experiences. First, an admitted insurance company seeks approval from a state regulator “by using an industry standard Guaranteed Cost policy and filing premium rate requests with the insurance department.”⁹⁷ The insurance department, already familiar with such guaranteed cost policies, approves the rates. The insurance carrier then sells these policies, along with the unregulated participation plan, to a targeted group of employers, in this case small to medium sized companies.⁹⁸ The participation plan requires the employer to fund a segregated cell from which all the insured’s losses are paid. According to the Patent for the RPA, the result is the following:

The reinsurance company can now provide funds to implement a non-linear retrospective rating plan as a “participation plan.” The reinsurance company does this by entering into a separate contractual arrangement with the insured. If the insured has lower than average losses in the next year, then the reinsurance company can provide a premium reduction according to the participation plan. If the insurance has higher than average losses in a given year, then the reinsurance company will assess additional premium accordingly. The insured can now, in effect, have a retrospective rating plan because of the arrangement among the insurance carrier, the reinsurance company and the insured even though, in fact, the insured has Guaranteed Cost insurance coverage with the insurance carrier.⁹⁹

In essence, CIC sells employers a guaranteed cost workers’ compensation policy that is then superseded by the terms of a participation plan. Premium owed under the guaranteed cost policies is replaced by premium paid for EquityComp under the RPA. The participation plans have a three-year term, in contrast to the one-year term of the guaranteed cost policies.

⁹⁷ ALJ Exh. 1, column 6, lines 53-56.

⁹⁸ ALJ Exh. 1, column 6, lines 60-63.

⁹⁹ ALJ Exh. 1, column 7, lines 42-54 (emphasis added).

Although titled a “Reinsurance Participation Agreement,” the RPA is not “reinsurance” as defined by Insurance Code section 620, but instead a separate contract entered into as part of the EquityComp program. Reinsurance is the process by which an insurance company buys insurance on its own risks. Respondent stipulated that the RPA is not a reinsurance contract.¹⁰⁰

2. Sales and Marketing

AU employs approximately 40 salespersons dedicated solely to selling EquityComp nationwide.¹⁰¹ Of those 40, four salespersons specifically service California brokers.¹⁰² Every salesperson is a licensed insurance broker and all work out of AU’s home office in Omaha, Nebraska.¹⁰³ Sales professionals receive two and one-half weeks of EquityComp training. Salespersons do not receive any follow-up EquityComp training.¹⁰⁴ AU’s training department performs all required training.¹⁰⁵

As part of the sale and marketing of EquityComp, AU issues a five-page Program Proposal and Rate Quotation (Program Proposal) to each potential insured.¹⁰⁶ AU’s underwriting staff generates the Program Proposals and forwards them to the Sales department for dissemination.¹⁰⁷ Potential participants do not generally receive a copy of the RPA until they have agreed in principle to the EquityComp terms. In fact, AU’s Sales division does not disseminate the RPAs, requests for service or officer exclusion forms.¹⁰⁸ AU’s New Business

¹⁰⁰ Tr. 614:24-615:10.

¹⁰¹ Tr. 1271:20-21.

¹⁰² Tr. 1274:8-9.

¹⁰³ Tr. 1276:1-17.

¹⁰⁴ Tr. 1275:13-22; Tr. 1278:10-18.

¹⁰⁵ Tr. 1277:2-17.

¹⁰⁶ Exh. 201.

¹⁰⁷ Tr. 1337:12-21.

¹⁰⁸ Tr. 1299:8-17.

department presents the RPA to potential participants on the day participants sign all EquityComp documents.¹⁰⁹

The Program Proposal introduces potential participants to the “Profit Sharing Plan” central to EquityComp. The Program Proposal notes the reinsurance plan is separate from the guaranteed cost plan and that an insured’s “risk retention is created by your participation in, and cessation of allocated premiums and losses to our facultative reinsurance facility, Applied Underwriters Captive Risk Assurance Company.” The Program Proposal further states that the profit sharing plan “is not a filed retrospective rating plan or a dividend plan” and that a minimum three-year commitment is required. Taking into account a participant’s estimated payroll, AU provides the participant with a projected one-year and three-year minimum premium and maximum premium. The Program Proposal also notes that AU determines the final net cost of the program using the participant’s ultimate claims costs, along with the factors and tables set forth in the RPA.¹¹⁰ Those “factors and tables” are not provided within the Proposal. Instead, AU informs participants they must maintain capital deposits in their cell accounts equal to: (1) the estimated annual loss pick containment amount multiplied by 10% during the first year, 10% during the second year, or 10% thereafter; and (2) outstanding reserves limited so not to exceed the maximum permissible cost. AU also informs participants that loss development factors, outlined in the RPA, will be applied to all claims to estimate their ultimate cost.

Under EquityComp, an employer is charged rates per \$100 of compensable payroll.¹¹¹ These rates do not match those provided in the guaranteed cost policy sold to the employer.¹¹² A participant’s “loss pick containment rate” (per \$100 of payroll) is multiplied by a “pay-in factor”

¹⁰⁹ Tr. 1297:13-19.

¹¹⁰ Exh. 201-3.

¹¹¹ Exh. 201-4.

¹¹² Tr. 1292:13-17.

based on the participant's expected losses. This results in the participant's "net pay-in rate." The net pay-in rate is then multiplied by the amount of payroll in that classification to calculate the estimated annual pay-in amount.¹¹³ The estimated annual pay-in amount differs from amounts quoted in the guaranteed cost policy and supersedes those terms. Experience modifiers and other guaranteed cost policy modification factors are not part of the profit sharing plan. Any changes to those factors does not impact the rates charged under EquityComp.¹¹⁴ Lastly, the net pay-in amounts do not include applicable assessments and taxes.

AU's Sales department distributes a Program Summary & Scenario to brokers and their clients.¹¹⁵ The Scenarios demonstrate the minimum and maximum three-year program costs and estimate the final program costs based on ultimate claims costs. The Scenarios chart the single-year prorated amounts a participant could expect to pay. For example, if an employer has no losses during the first year, the employer can expect to pay \$100,000 in program costs for that year. But this chart is misleading. EquityComp is sold as a three-year program and not three one-year programs.¹¹⁶ Accordingly, the single-year table does not represent the one-year cost of the program. In fact, it is the employer's three-year loss history that ultimately guides the cost of the program.

The Sales division also distributes a Request to Bind Coverages & Services. The Request to Bind must be executed along with the Reinsurance Participation Agreement. Each potential client may participate in a conference call with an AU "technical representative" to answer any questions about the Proposal and Summary. Lastly, the Request to Bind requires employers to arbitrate all claims, disputes or controversies involving EquityComp or the underlying

¹¹³ Exh. 201-4.

¹¹⁴ *Ibid.*

¹¹⁵ Tr. 1305:14-8.

¹¹⁶ Tr. 1364:8-22.

policies.¹¹⁷ The Request to Bind's dispute resolution provision differs from the provision of guaranteed cost policy sold to employers and supersedes the guaranteed cost policy.¹¹⁸

After disseminating all the relevant marketing materials to a broker, AU's salespersons initiate a conference call with the broker to further discuss the program.¹¹⁹ But only 10 percent of brokers actually participate in a conference call.¹²⁰ AU does not initiate a conference call with the employer itself; AU offers only the insurance broker a chance to discuss the program mechanics.¹²¹ The conference calls last anywhere from 30 minutes to one hour and are not recorded by AU.¹²² Salespersons do not work off a script and are permitted to answer questions about the program themselves. A majority of the questions asked by brokers and potential clients pertain to claims handling or the proposed scenarios.¹²³ If a salesperson cannot answer a broker's question, the salesperson seeks a response from a Sales Manager. Salespersons are not trained to answer questions about the RPA itself, but are able to answer questions about Schedule 1 of the RPA, which contains the loss development and run-off loss development factors.¹²⁴ Questions regarding the meaning of terms in the RPA are forwarded by the Sales department to Mr. Silver for a response.¹²⁵

Potential EquityComp participants interested in enrolling are directed to the New Business department. The New Business department distributes the RPA, as well as the Request for Service. These documents, along with the Request to Bind Coverages and Services, must be signed by the participant before any coverage takes effect. Insureds that refuse to sign the RPA

¹¹⁷ Exh. 205-1.

¹¹⁸ Tr. 1329:9-18.

¹¹⁹ Tr. 1299:24-1300:9.

¹²⁰ Tr. 1300:22-1301:9.

¹²¹ Tr. 1301:10-16.

¹²² Tr. 1281:6-13.

¹²³ Tr. 1283:9-23.

¹²⁴ Tr. 1314:23-1315:1; Tr. 1316:13-24.

¹²⁵ Tr. 1315:2-8.

lose their guaranteed cost insurance policy coverage with CIC.¹²⁶ Insurance coverage does not revert back to the terms of the guaranteed cost policy and insureds are left without insurance coverage from CIC.¹²⁷ In addition, nothing in the Program Proposal, Request to Bind or Summary and Scenarios names CIC as the insurer.¹²⁸

3. Program Mechanics

Taking the components and provisions of EquityComp by themselves does not necessarily present a working understanding of the program's mechanics. Indeed, the parties presented no less than six witnesses in an effort to explain EquityComp's operation. While most rating plans use a straightforward formula to calculate the overall policy costs, EquityComp uses only a narrative.¹²⁹

EquityComp pricing involves three separate components. The first is similar to the standard premium in a guaranteed cost policy. EquityComp calls this the loss pick containment rate and like the standard premium in a guaranteed cost policy, that amount is multiplied by \$100 of payroll to generate what is effectively the base policy premium.¹³⁰ The second component is a loss cost component. The loss cost component, or ultimate cost of claims, is calculated using paid claim amounts, reserved amounts and an estimate of future additional costs, multiplied by the loss developments factors set forth by AU.¹³¹ The third component of the program is fees. Fees under EquityComp are calculated as a percentage of an employer's loss pick containment amount. Specifically, an employer's loss pick containment amount is multiplied by an allocation factor (or minimum cost factor) and by an exposure group allocation factor.¹³² As AU calculates

¹²⁶ Tr. 1362:21-25.

¹²⁷ Tr. 1362:11-25.

¹²⁸ See Exhs. 201, 203 and 205.

¹²⁹ Tr. 352:24-353:4.

¹³⁰ Tr. 322:11-19.

¹³¹ Tr. 323:5-10.

¹³² Tr. 342:12-21.

fees based on the loss pick containment amount, participants will pay significant program expenses even when there are no claims filed.¹³³ For example, using the Scenarios presented to Shasta Linen, an employer with no claims during EquityComp's three-year term would pay \$322,623.¹³⁴ The entire amount would constitute EquityComp "fees" since no claims were filed. But if during that three-year period, an employer has one claim for \$30,000, the program cost more than doubles to \$672,627; \$642,627 of which are program fees received by CIC.¹³⁵

Participants receive a monthly EquityComp bill from ARS. The bill provides an overall EquityComp program cost but does not delineate between premium or program costs.¹³⁶ In addition, AU distributes a quarterly Plan Analysis that outlines the program fees and summarizes all claim costs.¹³⁷ Each open and closed claim is listed separately as are the amounts paid to injured employees. Participants remit their monthly payments to ARS, who then forwards the payment to CIC. CIC then allocates the monies to AUCRA in accordance with the agreement between AUCRA and CIC.¹³⁸ Monies ceded to AUCRA fund the participant's captive cell and are held in that cell until called upon by CIC.

When an employee files a workers' compensation claim, CIC pays the claim and then cedes that liability to AUCRA. AUCRA, in turn, cedes the liability to the participant's cell.¹³⁹ In essence, participants pay all of their own claim costs and continue to do so until they reach 93 percent of the maximum program costs. Participants can expect an increase in their bill in the month following any claim payments as the RPA calls for specific cell funding levels.¹⁴⁰

¹³³ Tr. 344:13-19.

¹³⁴ Exh. 46-6.

¹³⁵ *Id.* \$672,627 - \$30,000 = \$642,627.

¹³⁶ Tr. 774:17-22.

¹³⁷ See Exh. 216.

¹³⁸ Tr. 816:9-15; Tr. 893:18-894:23.

¹³⁹ Tr. 895:16-896:2.

¹⁴⁰ Tr. 897:3-8.

D. Reinsurance Participation Agreement

The RPA is a 10-page contract between AUCRA and the insured. The RPA's first six pages state the participant's monetary obligations, the length of the program, the dispute resolution mechanism for the program and a choice of law provision. Pages seven through ten, subtitled Schedule 1, set forth the calculation and allocation of premium and loss amounts, define the required capital deposit amounts and the penalty for early termination of the program, outline the applicable loss development and exposure group factors, and set the loss pick containment rate for each applicable classification.

1. Policy Term & Extensions

The RPA's initial "active term" is three years. During the RPA's active term, a participant's guaranteed cost workers' compensation insurance policy must be provided by a Berkshire Hathaway insurance carrier; i.e. California Insurance Company or Continental Insurance Company.¹⁴¹ If the insurer provides workers' compensation coverage outside of the RPA's active term, special "extension" terms apply. These extension terms require the participant to immediately pay a cash deposit equal to 55% of the premium anticipated, to maintain a cash deposit sufficient to cover outstanding losses plus incurred but not reported losses, and to pay an early cancellation fee equal to 20% of the premium anticipated, all of which are determined exclusively by AUCRA.¹⁴²

In addition to the three-year active term language, RPA paragraph 7 provides that the parties' RPA obligations extinguish "only where the Company no longer has any potential or actual liability to the issuing insurers with respect to the Policies reinsured by" AUCRA. Accordingly, while the RPA is active for three years, the parties' obligations continue until the

¹⁴¹ Exh. 207-2.

¹⁴² *Id.*

RPA is terminated in accordance with the terms set forth in Schedule 1, discussed below.¹⁴³

2. Choice of Laws and Dispute Resolution Procedure

The RPA provides that all disputes be exclusively governed by and construed in accordance with the laws of Nebraska.¹⁴⁴ The RPA also contains a two-page dispute resolution provision subjecting all disputes to binding arbitration in the British Virgin Islands.¹⁴⁵ All arbitration awards must be enforced in Nebraska courts.¹⁴⁶ According to CIC, this dispute resolution provision supersedes the language provided in the guaranteed cost policy.¹⁴⁷ In addition, nothing in the RPA or other EquityComp documents inform participants of their right to negotiate choice of law and dispute resolution provisions.

3. Early Cancellation Provision

The RPA sets forth its own early cancellation terms and penalties, different from those in the guaranteed cost policy. Any participant who cancels the RPA, or cancels the underlying guaranteed cost insurance policy, prior to the end of the active term is subject to the penalties set forth in Schedule 1 of the RPA.¹⁴⁸

In the event of early cancellation either by the participant or AUCRA:

- (a) the Exposure Group Adjustment Factor will be multiplied by 1.25;
- (b) the Cumulative Aggregate Limit will be determined using Policy Payroll annualized to reflect the full term of the Agreement;
- and (c) the following amounts will be immediately due and payable to the Company; i) any remaining premium, including short rate penalties, due under the Policies; ii) capital deposit equal

¹⁴³ Exh. 207-2.

¹⁴⁴ Exh. 207-5. In addition, any matter concerning the RPA “that is not subject to the dispute resolution provisions of Paragraph 13,” shall be resolved exclusively by the courts of Nebraska without reference to its conflict of laws.

¹⁴⁵ Exh. 207-3 to 207-4, paragraph 13(A). Paragraph 13(I) further provides that all arbitrations shall be conducted in accordance with the rules of the American Arbitration Association and shall take place in Tortola, British Virgin Islands.

¹⁴⁶ Exh. 207-5, paragraph 14.

¹⁴⁷ Tr. 1329:9-18. Mr. Watson testified that once a participant enrolls in EquityComp, “the guaranteed cost policy . . . has no effect.” Similarly, Ms. Gardiner could not provide an example where the guaranteed cost policy’s dispute resolution provision would be applicable. (Tr. 887:7-12.)

¹⁴⁸ Tr. 1329:9-18.

to the cell's maximum liability; and iii) a Cancellation Fee equal to 8% of the Estimated Annual Loss Pick Containment Amount.¹⁴⁹

The RPA does not explain these cancellation terms in monetary figures nor does AU provide the participant with a sample calculation based on early termination figures. But Ms. Gardiner provided uncontroverted testimony that had Shasta Linen chosen not to renew its guaranteed cost policy at the end of the policy's one year term in December 2011, AUCRA would have levied a \$1.1 million cancellation penalty against Shasta Linen.¹⁵⁰

4. Premiums, Capital Deposits and Applicable Rates

AU calculates EquityComp premium based on policy payroll and the loss pick containment amount. The loss pick containment amount is an amount equal to the product of policy payroll and the respective Loss Pick Containment Rates listed in Table C of Schedule 1.¹⁵¹ These rates are per \$100 of policy payroll and are fixed for the effective period. They do not mirror the rates provided for in the guaranteed cost policy and do not change even if the stated rates on the guaranteed cost policy decrease.¹⁵² In addition, changes in experience modifiers and other modification factors do not affect these rates. Thus, if an employer's experience modification factor decreases during the active term of the RPA, this reduced experience modification would have no impact on the EquityComp premium or costs.¹⁵³

The RPA also calculates loss development factors (LDFs) for each loss under the policies. These LDFs are generated by AU's underwriting department and are extrapolated from valuations provided by the WCIRB.¹⁵⁴ During the active term of the program, AU applies the weekly or monthly LDFs to each claim. If, at the end of the three-year active term, a participant

¹⁴⁹ Exh. 207-8.

¹⁵⁰ Tr. 885:1-5.

¹⁵¹ Exh. 207-7.

¹⁵² Tr. 1291:16-20; Tr. 899:1-9.

¹⁵³ Tr. 318:12-21; Tr. 897-898:14-7; Exh. 207-7; Exh. 44-4.

¹⁵⁴ Tr. 795:8-12.

refuses to renew the EquityComp program or AU refuses to offer renewal, the RPA applies “run-off LDFs” to each open and closed claim.¹⁵⁵ AU coined the term “run-off LDF” for purposes of the RPA. It is not a term used in the insurance industry or a valuation method used by other carriers.¹⁵⁶ For open claims, the run-off LDFs are 50 percent higher than LDFs applied during the active term.¹⁵⁷ In practical terms, a claim reserved at \$75,000 one month prior to the end of the program’s active term could be reserved at \$293,000 the next month, resulting in a \$218,000 bill from AU after expiration of the program.¹⁵⁸ Run-off LDFs are also generated by AU’s underwriting department and are non-negotiable.¹⁵⁹

All losses under the policies are ultimately paid from the participant’s cell account and a participant is solely responsible for paying its losses up to 93 percent of its three-year loss pick containment amount.¹⁶⁰ Participant’s fund their own cell account through the premiums and capital deposits. Participants agree to make and maintain a capital deposit equal to the estimated annual loss pick containment amount multiplied by 10 percent during the first year, 10 percent the second year and 10% thereafter.¹⁶¹ In addition, participants must make an additional capital deposit equal to the lesser of the ultimate loss or the cumulative aggregate limit.¹⁶²

5. Cell Liquidation

At the end of the RPA’s 3-year active term, AUCRA may, at its sole discretion, liquidate the participant’s cell and return any excess premium and fees to the participants. That said, liquidation of the cell cannot occur unless:

¹⁵⁵ Exh. 207-7; Tr. 886:11-19; Tr. 1318:12-21.

¹⁵⁶ Tr. 891:12-892:3; Tr. 350:2-7.

¹⁵⁷ Tr. 799:1-19.

¹⁵⁸ Tr. 802:4-9.

¹⁵⁹ Tr. 795:8-17; Tr. 1319:15-18.

¹⁶⁰ Tr. 1321:5-14.

¹⁶¹ Exh. 207-7.

¹⁶² Exh. 207-8.

- i) all claims under the Policies are closed and three years have elapsed since the expiration of all of the Policies; or
- ii) the Participant's maximum liability has been reached and three years have elapsed since the expiration of all of the Policies; or
- iii) the amount of paid losses allocated to the cell under the policies has exceeded the Participant's maximum liability; or
- iv) seven years have elapsed since the expiration of all of the Policies; or
- v) the Company deems itself insecure with respect to Participant's ability or willingness to fulfill its obligations under this Agreement.¹⁶³

In essence, a program participant must wait, at a minimum, an additional three years after expiration of the RPA in order to receive a return of excess funds paid to CIC and AU.¹⁶⁴ There is no provision to accelerate this process and, indeed, AUCRA may withhold these funds for up to seven years after expiration of the policy.¹⁶⁵ To date, AUCRA has not made any profit-sharing distributions.¹⁶⁶

E. Dispute Between Shasta Linen and CIC

In January 2013, AU billed Shasta Linen for \$244,213.31. Shasta Linen challenges this bill. Understanding this dispute requires analysis of Shasta Linen's guaranteed cost policies, the terms of its RPA and AU's claims processing.

1. Guaranteed Cost Policy

CIC issued Shasta Linen three, one-year guaranteed cost policies, the first of which incepted on January 1, 2010 and expired on January 1, 2011. Subsequent policies incepted on

¹⁶³ Exh. 207-8.

¹⁶⁴ Tr. 1325:4-15; Tr. 813:20-814:3.

¹⁶⁵ Tr. 441:15-20.

¹⁶⁶ In order to secure a complete and accurate record, the ALJ twice ordered Respondent to provide the number of participants who received a profit-sharing distribution, the date upon which their program ended and the date upon which they received a distribution. Respondent refused to comply with the ALJ's Order. Pursuant to Evidence Code sections 412 and 413, the Commissioner infers from Respondent's failure to produce this readily available evidence that AUCRA has not made any profit-sharing distributions.

January 1, 2011 and January 1, 2012, and expired on January 1, 2012 and January 1, 2013, respectively. Each policy contained the statutory language regarding dispute resolution, premium calculation and early termination, outlined in Section B, subdivision (2)(a), *infra*.

Each of Shasta Linen's guaranteed cost policies included an information page and an extension of information page. The information page estimated Shasta Linen's annual premium, while the extension page listed Shasta Linen's rates per \$100 of payroll and experience modification factor.¹⁶⁷ As is customary under a guaranteed cost policy, CIC multiplied Shasta Linen's expected payroll in each classification by the rate quoted, factored in Shasta Linen's experience modification and added applicable taxes and fees in order to estimate Shasta Linen's annual premium.

For policy year 2010, CIC quoted the following rates per \$100 of payroll: \$17.77 for classification code 2585; \$1.00 for classification code 8743; and \$0.84 for classification code 8810. Based on Shasta Linen's estimated payroll and experience modification factor of 1.68, CIC approximated Shasta Linen's annual premium at \$339,800.¹⁶⁸

In policy year 2011, CIC increased Shasta Linen's rates per \$100 of payroll as follows: \$19.59 for classification code 2585; \$1.02 for classification code 8742; and \$0.83 for classification code 8810. The increase in rates, higher payroll amounts and a larger experience modification factor of 1.94 resulted in an estimated annual premium of \$407,920.¹⁶⁹

CIC did not alter Shasta Linen's rates per \$100 of payroll in 2012. But Shasta Linen's experience modification factor dropped from 1.94 to 1.01. As a result, Shasta Linen's estimated annual premium for the 2012 policy year equaled \$285,368.¹⁷⁰

¹⁶⁷ Exh. 208-1; Exh. 208-3.

¹⁶⁸ Exh. 208-20.

¹⁶⁹ Exh. 209-23.

¹⁷⁰ Exh. 210-26.

Shasta Linen's estimated premium and rate charges under the guaranteed cost policy are summarized as follows:

	2585 (per \$100)	8742 (per \$100)	8810 (per \$100)	Ex. Mod. Factor	Annual Premium
2010	\$17.77	\$1.00	\$0.84	1.68	\$339,800
2011	\$19.59	\$1.02	\$0.83	1.94	\$407,920
2012	\$19.59	\$1.02	\$0.83	1.01	\$285,368

2. EquityComp/RPA Program

In December 2009, AU quoted Shasta Linen a minimum single-year premium of \$107,541, a maximum premium of \$322,623 and an annual loss pick containment amount of \$283,450.¹⁷¹ The EquityComp rates per \$100 of payroll differed from those quoted in Shasta Linen's guaranteed cost policy and constitute the actual rates charged to Shasta Linen.¹⁷²

	Loss Pick Containment Rate	Estimated Annual Payroll	Annual Pay-In Amount
2585 (per \$100)	\$18.68	\$1,500,000	\$280,200.00
8742 (per \$100)	\$1.05	\$155,000	\$1,627.50
8810 (per \$100)	\$.88	\$188,319	\$1,657.20
			\$283,484.00

The EquityComp rates remained the same for the three-year duration of the program and did not change when Shasta Linen saw a reduction in its experience modification factor. For example, Shasta Linen's 2012 experience modification factor dropped from 1.94 to 1.01. This decrease had no impact on Shasta Linen's costs or premium under EquityComp.

Shasta Linen paid AU an initial set-up fee of \$3,203 and a capital deposit of \$28,345.¹⁷³ From January 2010 through June 2011, Shasta Linen's monthly payments ranged from \$12,903

¹⁷¹ Exh. 201-3.

¹⁷² See also Exh. 207-10.

¹⁷³ Exh. 202-2; Exh. 211-1.

to \$36,513.¹⁷⁴ In July 2011, AU sent Shasta Linen a bill for \$83,612.49.¹⁷⁵ The significant increase in charges caused Shasta Linen to take a closer look at the EquityComp program.¹⁷⁶ The substantial bill also forced Shasta Linen into a promissory note with AU to spread out the payments over a four month period.¹⁷⁷

In addition to monthly billing concerns, Shasta Linen became concerned that neither CIC nor AU possessed incentive to investigate workers' compensation claims. As evidence of this concern, Ms. Richardson recounted the case of employee Mr. M.¹⁷⁸ After failing to turn over customer payments, Mr. M went out on disability and indicated he was unable to fulfill his duties as a driver. Shortly thereafter, Ms. Richardson witnessed Mr. M driving a truck on the highway. Ms. Richardson informed AU of this fact but AU took no action. Mr. M's workers' compensation claim ultimately cost Shasta Linen \$111,679.¹⁷⁹

In November 2012, Shasta Linen changed insurance brokers and informed SVIS of this change.¹⁸⁰ On December 19, 2012, Shasta Linen's SVIS broker informed Ms. Richardson that AU wished to offer Shasta Linen a one-year extension on the EquityComp program.¹⁸¹ Ms. Richardson declined this offer and reminded SVIS that it no longer represented Shasta Linen.

By December 2012, Shasta Linen had paid AU program costs totaling \$934,466 despite suffering three-year cumulative losses of only \$268,000.¹⁸² In addition, nearly \$200,000 remained in Shasta Linen's captive cell. Nonetheless, in January 2013, AU requested an

¹⁷⁴ Exh. 212-9; Exh. 211-23.

¹⁷⁵ Exh. 212-11. Ms. Richardson testified "we never knew what we were going to be billed" and this made budgeting for workers' compensation insurance extremely difficult. (Tr. 123:21-124:3) It was ultimately determined that the \$83,000 bill for July 2011 was due to a calculation error by AU and ARS. (Tr. 127:20-128:4.)

¹⁷⁶ Tr. 123:21-124:3.

¹⁷⁷ Exh. 2.

¹⁷⁸ The Commissioner intentionally omits the full name of the employee at issue.

¹⁷⁹ Tr. 134:21-25.

¹⁸⁰ Tr. 149:17-22; Exh. 33.

¹⁸¹ Tr. 150:23-151:6. Exh. 4-6.

¹⁸² Exh. 218-157.

additional \$244,213.31 in program costs based entirely on the application of run-off LDFs to Shasta Linen's two remaining open claims. Shasta Linen has refused to pay these additional costs.

3. Subsequent Workers' Compensation Insurance Premiums

In January 2013, Shasta Linen's secured a guaranteed cost workers' compensation insurance policy from Pacific Compensation with an annual premium of \$315,283. In January 2014, Shasta Linen secured a guaranteed cost insurance policy from Insurance Company of the West with an annual premium of \$261,499.¹⁸³ In each of these guaranteed cost policies, Shasta Linen benefitted from a reduced experience modification factor, which was the result of their more favorable loss history while insured by CIC.¹⁸⁴

F. Reinsurance Treaty and Addendums

CIC filed with the Department the reinsurance treaty and addendums.¹⁸⁵ The reinsurance treaties and addendums were signed by Steven Menzies for both CIC and AUCRA, first as Executive Vice President and Vice Presidents for each company, respectively, and then as President for both entities. The Department acknowledged the filings by letter dated June 25, 2008, and noted its review of the Treaty and Addendums was limited to those provisions related reinsurance agreements.¹⁸⁶

The parties stipulated in this proceeding that the RPA is not actually reinsurance.¹⁸⁷ This stipulation by CIC is in direct conflict to the representations made to the Commissioner by CIC when the reinsurance treaty and addendums were filed and acknowledged by the Commissioner

¹⁸³ Exh. 83.

¹⁸⁴ An employer's experience modification factors reflects a three year period, commencing four years and nine months prior and terminating one year and nine months prior to the date for which an experience modification is to be established. (California Workers' Compensation Experience Rating Plan (ERP), Section III, Rule 3.)

¹⁸⁵ Exh. 232

¹⁸⁶ *Ibid.*

¹⁸⁷ Tr: 614:24 - 615:2

and the testimony offered at hearing.

The RPA itself is based upon and results from the reinsurance treaties filed by CIC. As noted in the testimony of Jeffrey Silver, General Counsel of CIC, Shasta Linen was a “party” to the reinsurance agreement between CIC and AUCRA by virtue of the RPA, and the RPA becomes part of and is based upon the reinsurance agreement between CIC and AUCRA.¹⁸⁸ CIC was the party initiating and filing the reinsurance with AUCRA.

VI. Applicable Law

In California, the Legislature is granted plenary power through our State Constitution to create and enforce a complete system of workers’ compensation.¹⁸⁹ This includes “full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating insurance coverage in all its aspects....”¹⁹⁰ Therefore, workers' compensation insurance programs are closely scrutinized and highly regulated based upon the provisions of the California Insurance Code, and the Legislature has created a comprehensive scheme mandating employer coverage and regulatory oversight. In order to execute this broad regulatory structure, the Legislature charged the Insurance Commissioner with the authority to oversee the form and substance of all workers' compensation insurance plans; everything from the scope of required coverage provided to employees to the amount employers pay insurers for premiums.

The Insurance Code sets forth both comprehensive workers’ compensation policy form and rate requirements for all insurers. Article 2 of Chapter 3, which is set forth in Insurance Code Sections 11651 through 11664, and Article 2 of Chapter 3, which is set forth in Insurance Code Sections 11730 to 11742, delineate these provisions. For instance, every policy must contain a clause providing that the insurer is directly and primarily liable for payment of any

¹⁸⁸ Tr: 1210:12-20; 1212:2-4.

¹⁸⁹ California Constitution, Art. XIV, Section 4.

¹⁹⁰ *Ibid.*

compensation for which the employer is liable.¹⁹¹ Policies must also state that the insurer is not relieved from payment “if the employer becomes insolvent or is discharged in bankruptcy” during the policy period.¹⁹² The insurer will “be bound by and subject to the orders, findings, decisions, [and] awards rendered against the employer subject to the terms of the policy.”¹⁹³ Section 11654 also specifies that the “insurance contract shall govern as between the employer and the insurer as to payments by either in discharge of the employer's liability for compensation.”

A. Statutory Authority for Pre-Filing of Workers’ Compensation Forms

Under both the Insurance Code and its applicable Regulations, insurers must adhere to a two-step process before using any policy or endorsement in California. First the policy form or endorsement must be filed with a licensed rating organization, and the licensed rating organization is to confirm those policy forms and endorsements comply with law. The policy forms and endorsements are then filed with the Insurance Commissioner and cannot be used until after 30 days or, in some instances, authorized by the Insurance Commissioner. The clearest recitation of this requirement is found in Insurance Code section 11658:

(a) A workers’ compensation insurance policy or endorsement shall not be issued by an insurer to any person in this state unless the insurer files a copy of the form or endorsement with the rating organization pursuant to subdivision (c) of Section 11760 and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or endorsement prior to that time.

An endorsement may concern matters unrelated to the description of the insurer's indemnity and

¹⁹¹ Ins. Code § 11651.

¹⁹² Ins. Code § 11655.

¹⁹³ Ins. Code § 11654.

insurance obligations.¹⁹⁴

Section 11750.3 provides the WCIRB, the only licensed rating organization, with authority to examine all policies, endorsements and other forms for the purpose of determining whether such policies, endorsements and forms comply with California law. In addition, California Code of Regulations, title 10, section 2218 requires “all workers’ compensation forms be submitted in duplicate” to the WCIRB for inspection and then to the Insurance Commissioner for final action.

The Insurance Commissioner has consistently stated these requirements. For example, in 2011, the CDI reminded the WCIRB to inform its insurer members that agreements that affect the obligations of a workers’ compensation insurer or insured must be filed with the WCIRB and the Insurance Commissioner prior to use. The letter noted that the Insurance Commissioner was particularly concerned with arbitration provisions contained in unattached collateral agreements and considered such terms unenforceable unless the insurer demonstrated that the arbitration agreement was expressly agreed to by the insured at the time the policy was issued.¹⁹⁵

In sum, insurers who offer and issue workers’ compensation insurance policies, endorsements and forms in California must submit such policies, endorsements and forms, however titled by the insurer, for review. Such materials must be filed with the WCIRB, which reviews them and forwards them to the Insurance Commissioner for final review before use in California.¹⁹⁶ Rate information is submitted directly to the Insurance Commissioner pursuant to section 11735. An insurer may begin offering filed policies, endorsements or other materials 30

¹⁹⁴ See *Donahue Constr. Co. v. Transport Indem. Co.*, 7 Cal.App.3d 291, 303 [insurance policies may include the duty to defend an insured]; *Genuser v. Ocean Accident & Guarantee Corp.*, 57 Cal.App.2d 979, 983 [insurance policy may limit the time within which a lawsuit may be brought under the policy].

¹⁹⁵ Notice of Hearing and Order to Show Cause, in *The Matter of Zurich American Insurance Company*, DISP-2011-00811 at p. 6. The ALJ took Official Notice of this filing.

¹⁹⁶ Ins. Code § 11658

days after the Insurance Commissioner receives the materials, if the Insurance Commissioner has not already advised the insurer that the materials do not comply with California law.¹⁹⁷ If the Insurance Commissioner advises the insurer at any time that the filed materials do not comply with California law, the insurer may not issue any policy, endorsement or other form that includes such material.¹⁹⁸

B. Statutory Authority Prohibiting Unfiled Collateral Agreements

California Code of Regulations, title 10, section 2268 states that no collateral agreement to a workers' compensation insurance policy may be made that modifies the obligation of the parties unless the agreement is made part of the policy's terms. Specifically, section 2268 states:

No collateral agreements modifying the obligation of either the insured or the insurer shall be made unless attached to and made a part of the policy, provided, however, that if such agreements are attached and in any way restrict or limit the coverage of the policy, they shall conform in all respects with these rules.

This regulation is clear on its face that any obligation of either the insurer or the insured concerning the workers' compensation insurance that is not contained in the insurance policy is required to be made part of the policy and unendorsed side agreements are prohibited. This regulation therefore requires the filing of any agreement that modifies or alters the insured's: (1) obligation to reimburse or otherwise pay the insurer for loss adjustment expenses and/or other claims or policy related expenses; (2) indemnity or loss obligation; (3) payment or reimbursement obligation; (4) allocation of loss adjustment expenses or other fees and expenses; (5) timing of reimbursements or payments to the insurer; (6) collateral; (7) circumstances that constitute a default; (8) choice of law; (9) arbitration obligation; and (10) other material

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

obligations under any workers' compensation insurance program, plan or policy.¹⁹⁹

C. Statutory Authority for Pre-Filing of Workers' Compensation Rates

The regulatory obligation for insurers to file their workers' compensation rates before use in this state is set forth in Insurance Code sections 11735 and 11750.3 and in the California Code of Regulations. Section 11735 requires every insurer to file with the Insurance Commissioner "all rates and supplementary rate information that are to be used in this state." The rates and supplementary rate information must be filed no later than 30 days prior to use. A filed rate may be disapproved by the Insurance Commissioner pursuant to the applicable subdivisions of Section 11737.

D. Statutory Appeal Language

The Insurance Code also permits policyholders harmed by the application of a rate or rating plan to file an appeal with the Insurance Commissioner. Specifically, Insurance Code section 11737, subdivision (f) states:

(f) Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. If the insurer or rating organization fails to grant or reject the request within 30 days, the applicant may proceed in the same manner as if the application had been rejected.

Any party affected by the insurer or rating organization's response may appeal to the Insurance Commissioner within 30 days after written notice of the action. The Commissioner, after conducting an evidentiary hearing, may affirm, modify, or reverse that action.

¹⁹⁹ *American Zurich Ins. Co. v. Country Villa Serv. Corp.* (2015) 80 Cal. Comp. Cases 687, 703-704; Notice of Hearing and Order to Show Cause, in *The Matter of Zurich American Insurance Company*, *supra*, DISP-2011-00811 at pp. 4-5.

The authority to hear grievances of employers for misapplication of rates, noted above, is separate from the Commissioner's authority to disapprove rates. Subdivisions (a) through (e) and (g) of Section 11737 deal with rate disapproval by the Commissioner. Subdivision (h) of Section 11737 deals with the rate that will be in effect if there is no applicable rate.

E. Reinsurance

Section 620 of the Insurance code defines reinsurance as: "A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance." The original insured has no interest in the reinsurance as a matter of law.²⁰⁰ Reinsurance is "a special form of insurance obtained by insurance companies to help spread the burden of indemnification. A reinsurance company typically contracts with an insurance company to cover a specified portion of the insurance company's obligation to indemnify a policyholder.... The reinsurance contract is not with the insured/policyholder.' " *Catholic Mut. Relief Soc. v. Superior Court* (2007) 42 Cal. 4th 358, 368, quoting *Ascherman v. General Reinsurance Corp.* (1986) 183 Cal.App.3d 307, 311, fn. 5.

A reinsurance policy may not be used to change the underlying insurance policy. "An essential feature of reinsurance is that it does not alter the terms, conditions or provisions of the contract of liability insurance between the direct liability insurer and its insured..." *Catholic Mut. Relief Soc., supra*, 42 Cal. 4th at 369. Thus, by definition, a reinsurance contract may not involve the original insured/policyholder's contract of insurance.

This is not to say reinsurers may not contract with the original insured at all. In fact, the Insurance Code clearly indicates that a reinsurer may contract separately with a policyholder but only as to rights of policyholders against the reinsurer: "The original insured or policyholder shall not have any rights against the reinsurer which are not specifically set forth in the contract

²⁰⁰ Ins. Code § 623.

of reinsurance, or in a specific agreement between the reinsurer and the original insured or policyholder.”²⁰¹ Since the Insurance Code defines reinsurance as only between an insurer and a reinsurer, a reinsurer cannot directly insure an insurer’s policyholder, including changes in rates, premium, claims handling, etc., so as to modify the underlying contract between the insurer and its insured. For a reinsurer to do otherwise effectively results in it becoming an insurer.

VII. Discussion

Shasta Linen contends the EquityComp program, with its required RPA, modifies the guaranteed cost policy’s rates, dispute resolution provision, and cancellation terms, and as such must be filed and approved by the Insurance Commissioner prior to use. CIC argues the CDI lacks jurisdiction over this appeal, that the RPA does not alter the terms of the guaranteed cost policy, and that mention of the EquityComp program in CDI market examinations constitutes approval of the program. CIC also argues the CDI may not void the RPA’s terms.

After examining the facts and applicable law, the Insurance Commissioner concludes he has jurisdiction over this appeal; EquityComp and its accompanying RPA constitute a collateral agreement pursuant to California Code of Regulations, title 10, section 2268, which is void as a matter of law; CIC was the primary party instituting an illegal program to modify its rates with its insureds and ultimately the premium charged to Shasta Linen through the collateral agreement; and CIC made misrepresentations to the Commissioner concerning its workers’ compensation insurance programs and reinsurance.

A. The Insurance Commissioner’s Exclusive Jurisdiction over this Appeal

CIC initially contended that the Commissioner lacks jurisdiction to consider this case. Specifically, CIC argues (1) appeals filed under Insurance Code section 11737, subdivision (f) may only determine “whether CIC has properly applied its [rate] filings to determine how much

²⁰¹ Ins. Code § 922.2, subd. (c).

premium to charge” and may not address the potential illegality of the rate filing;²⁰² (2) the RPA is between AUCRA and Shasta Linen and relief in this forum is not possible;²⁰³ (3) whether the RPA is an unlawful collateral agreement in violation of the Insurance Commissioner’s Regulations is beyond the scope of the CDI’s jurisdiction;²⁰⁴ and (4) only the Insurance Commissioner may initiate a hearing to disapprove a rate on the ground that it is unfiled.²⁰⁵ Each of these arguments lack merit as discussed below.

1. Section 11737(f) Appeals Address Insurer Filings

CIC contends this appeal may only consider whether CIC assessed Shasta Linen’s premium in accordance with its approved rate filings.²⁰⁶ But CIC misinterprets the statute and inserts language that is not included.

Insurance Code section 11737 provides the Insurance Commissioner the authority to take various actions regarding rates, including disapproval of rates that fail to comply with filing requirements, result in inadequate or discriminatory premiums or threaten an insurer’s solvency. Subdivision (f) provides employers with a similar right to challenge filed rates as they apply to that particular employer and authorizes the Insurance Commissioner to determine the proper application of the filed rate.

Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered.²⁰⁷

²⁰² Respondent’s Post-hearing Opening Brief, 21:13-22:7.

²⁰³ Respondent’s Post-hearing Opening Brief, 22:8-18.

²⁰⁴ Respondent’s Post-hearing Opening Brief, 23:8-14.

²⁰⁵ Respondent’s Post-hearing Opening Brief, 23:21-24:6.

²⁰⁶ Respondent’s Post-hearing Opening Brief, 22:4-7.

²⁰⁷ Ins. Code § 11737, subd. (f).

If the employer disagrees with the carrier's response, it may appeal to the Insurance Commissioner. Appeals presented to the Insurance Commissioner are heard by the Administrative Hearing Bureau pursuant to California Code of Regulations, title 10, section 2509.40 et seq.

Nothing in section 11737, subdivision (f) limits review to premiums charged under the rating system. Contrary to CIC's argument, an insurer's rating plan and rates are not synonymous with "premium." Section 11730, subdivision (g) defines rates as "the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expenses considerations and does not include minimum premiums." Section 11737, subdivision (f) provides an employer aggrieved by an insurer's application of its rates to that employer with a forum for such disputes. Shasta Linen complains CIC did not adhere to its filed rating plan and rates in assessing workers' compensation premium and costs under EquityComp. Certainly such a dispute falls under section 11737, subdivision (f).

Even assuming section 11737, subdivision (f) pertains only to premiums charged, the underlying complaint satisfies such a requirement. Shasta Linen argues the EquityComp premium and rates per \$100 of payroll differ from those filed and approved by the Commissioner. CIC counters this argument by stating the RPA charges program fees, not premiums.²⁰⁸ While CIC is careful to call EquityComp costs "program costs" and not premiums, this is a distinction without a difference. Indeed, Mr. Watson used the terms interchangeably during his testimony and the patent application itself calls the costs under the RPA "premiums."²⁰⁹ Moreover, money paid by an insured to an insurer for coverage constitutes

²⁰⁸ Respondent's Post-hearing Opening Brief, 25:1-20.

²⁰⁹ ALJ Exh. 1, col. 1, lines 44-48: "The risk sharing participation program is structured such that the insured's net premium payment will vary in a non-linear manner with respect to their actual losses. In particular, there will be accelerated savings in premiums for particularly low losses over a given period of time." See also, Tr. 1292:22-15.

premium regardless of the name. This, of course, is consistent with the structure of the program. Accordingly, even under CIC's limited reading of the statute, the dispute is properly before the Commissioner.

Shasta Linen was aggrieved by the modification of the guaranteed cost rate and resulting premium which was inconsistent with that which was supposed to be charged under CIC's rate filing and the terms of the guaranteed cost policy that was actually issued. No other rate is applicable except for those filed by CIC, and the RPA cannot be used as either the rate or to calculate the premium of Shasta Linen since it had not been filed with the Commissioner.²¹⁰

2. AUCRA is Not a Necessary Party to this Appeal

CIC asserts the RPA is a contract between AUCRA and Shasta Linen and as the appeal names only CIC, the Insurance Commissioner cannot rule on the agreement's legality. More specifically, CIC argues that AUCRA is not an insurer, and therefore not subject to the appeal procedures under section 11737. This argument is without merit.

While it is true that the RPA is a contract between AUCRA and an employer, AUCRA is not an independent third party or unrepresented at this hearing. AUCRA is a wholly-owned subsidiary of Applied Underwriters, Inc.; the same corporation that owns CIC. The Boards of Directors for CIC, AU, and AUCRA are identical in composition and officers and directors of all three entities testified during the hearing.²¹¹ In addition, AUCRA's sole purpose is to serve as a supposed reinsurer to CIC. As such, it is inextricably intertwined with CIC and AU. Indeed, the affiliated entities are so enmeshed that each of CIC's financial examinations discusses EquityComp as a CIC product, and there is no evidence CIC sought to distinguish itself from

²¹⁰ See Ins. Code §§ 11735 and 11737.

²¹¹ Tr. 1153:2-4; Tr. 863:1-3.

EquityComp²¹²

It is also true that the EquityComp program requires CIC or another licensed insurance carrier participate in the program. And while CIC may not be a signatory to the RPA, CIC represented that the rates filed and approved by the Commissioner would be the rates charged to California consumers. That CIC contracted with an affiliated corporation to alter or modify those rates does not absolve the carrier from liability in this proceeding, nor does it protect the RPA from analysis. This is especially true given that AU structured EquityComp and the RPA to circumvent state regulators.²¹³

It is most important to note that CIC is the party that, through its Executive Vice President, and then President, Steven Menzies²¹⁴ created and entered into the reinsurance treaty and addendums that transferred its EquityComp insured policyholders to AUCRA. The treaty specifically notes the ceding of EquityComp business to AUCRA by CIC. CIC now stipulates that the arrangement between it and AUCRA is not actually reinsurance. However, a party merely stipulating at hearing does not alter or eliminate the facts in this record that CIC did enter into reinsurance treaties with a reinsurer related to it through its corporate parent, with common executives facilitating the transaction, and utilized that reinsurance to perpetuate its scheme to change its filed rates and insurance contracts with its insureds. CIC, through this stipulation, is merely trying to wash its hands of responsibility as the primary party responsible for this arrangement.

Lastly, the Commissioner must determine whether the rates and rating plan sold to Shasta Linen adhere to the Insurance Code and the approved rating plan. If Shasta Linen's rates differ

²¹² Exh. 233-11.

²¹³ ALJ Exh. 1, column 7, lines 42-54.

²¹⁴ Steven Menzies was at the time of the signing of the reinsurance treaties the Vice President and then President of AUCRA. See Exh. 232.

from those quoted by CIC and approved by the Commissioner, Shasta Linen may challenge those rates under section 11737, subdivision (f), regardless of whether CIC or AUCRA sold Shasta Linen the RPA.

3. Conclusions Regarding RPA are Not Beyond Scope of Appeal

CIC argues that analysis and conclusions regarding the RPA are beyond the scope of a section 11737, subdivision (f) hearing. CIC argues the RPA does not impact the “rating system” and thus it is irrelevant whether the RPA is an unlawful collateral agreement under the Insurance Code and its Regulations. This argument is also without merit.

Whether the RPA impacts rates or the rating system is a question of law to be determined by the Insurance Commissioner.²¹⁵ CIC’s argument relies upon the legal conclusion that the RPA does not impact rates and thus is outside the Insurance Commissioner’s jurisdiction. This appeal requires the Insurance Commissioner to consider the impact of the RPA. As stated in CIC’s parent company’s own patent, the RPA, set up through CIC’s reinsurance agreement with ACURA, was intended to modify the guaranteed cost policy and change it into a retrospective rating plan.²¹⁶ Permitting the RPA to be beyond the scope of this appeal will impose upon Shasta Linen improper rates and premium in this state, which harms both this employer and the workers’ compensation system established by the Legislature.

4. Section 11737 Hearings May Be Initiated by Insurance Commissioner or Insured

CIC argues that only the Insurance Commissioner may initiate a hearing to disapprove an unfiled rate. In support of this contention, CIC cites section 11737, subdivision (a) arguing the Insurance Commissioner has discretion to approve unfiled rates and *Bristol Hotels & Resorts v.*

²¹⁵ *Conestoga Servs. Corp. v. Executive Risk Indem., Inc.* (9th Cir. 2002) 312 F.3d 976, 981; *Fragomeno v. Ins. Co. of the West, Inc.* (1989) 207 Cal.App.3d 822, 827.

²¹⁶ ALJ Exh. 1.

National Council on Compensation Ins. Inc. (2002) 2002 WL 387266. Neither argument is persuasive.

Pursuant to Insurance Code section 11735 an insurer *shall* file all rates and supplementary rate information that are to be used in this state no later than 30 days prior to their effective date.²¹⁷ Pursuant to Insurance Code section 11658, an insurer *shall* not issue a policy unless it has been approved in form and substance by the Insurance Commissioner and the WCIRB.²¹⁸ Similarly, California Code of Regulations, title 10, section 2218 requires insurers submit all workers' compensation insurance forms to the WCIRB and the Insurance Commissioner for approval prior to use. The statute and regulations are clear. An unfiled rate or policy form or endorsement is unlawful.²¹⁹ And as discussed above, under section 11737, subdivision (f) a consumer may challenge the use of an unfiled rate.

CIC also cites *Bristol Hotels & Resorts, supra*, arguing that an unfiled rate is not an unlawful one. *Bristol Hotel & Resorts* is an unpublished California case. The California Rules of Court however, prohibit citation to an unpublished decision for this purpose.²²⁰ The rules authorize reference to unpublished opinions only in a narrow set of circumstances, none of which apply here.²²¹ Accordingly, the ALJ disregards the citation to *Bristol Hotels & Resorts* and CIC's argument thereunder.²²²

²¹⁷ Ins. Code § 11735, subd. (a).

²¹⁸ Ins. Code § 11658, subd. (a).

²¹⁹ See also, *American Zurich Ins. Co., supra*, 80 Cal. Comp. Cases 687, 709-710.

²²⁰ Cal. Rules of Court, rule 8.115(a).

²²¹ Cal. Rules of Court, rule 8.115(b).

²²² *Humane Soc'y of the United States v. Superior Court of Yolo County* (2013) 214 Cal.App.4th 1233, 1266.

5. Subdivision (f) of Insurance Code Section 11737 Permits the Insurance Commissioner to Apply the Applicable Filed Rate to the Aggrieved Insured.

The Insurance Commissioner has authority to hear any dispute concerning a policyholder aggrieved by an insurer's application or misapplication of the insurer's filed rates pursuant to subdivision (f) of Insurance Code section 11737. Subdivision (f) has no time limitations for a grievance to be filed and only requires that the policyholder be aggrieved by the application of an insurer's rate. In this matter, CIC utilized an unfiled side agreement through its reinsurer to apply an unfiled rating plan. Subdivision (f) states nothing in its provisions that requires it to be applied prospectively. By the subdivisions own terms, it may be applied retroactively since the provision uses the past-tense term "aggrieved" and requires the Commissioner to review the "manner in which the rating system has been applied in connection with the insurance afforded..."²²³

If one were to apply subdivision (f) only prospectively, any insured that obtained a policy would have no recourse to an insurer's improper rating. The remedy afforded to the policyholder under subdivision (f) is not the discontinuance of an unfiled rate, but the Commissioner applying the proper filed rate applicable to the policyholder through this administrative process.²²⁴

B. EquityComp and RPA are Collateral Agreements

Having rejected CIC's jurisdictional arguments, the analysis turns to the agreed-upon issue in this appeal: whether EquityComp and its accompanying RPA modify or alter the terms and rates of the underlying guaranteed cost policy. CIC initially contends the RPA is not a collateral agreement since it does not modify CIC's indemnity obligations. CIC also argues the RPA does not alter the rates charged to Shasta Linen or modify any other terms of the guaranteed

²²³ Ins. Code § 11737, subd. (f).

²²⁴ *Ibid.*

cost policy. But CIC's contentions ignore the statutory language and relevant case law on this issue, and disregard witness testimony and the terms of the RPA.

1. Modifications Not Limited to Indemnity Obligations

CIC argues the RPA does not constitute a collateral agreement since it does not limit or restrict CIC's obligation to pay claims.²²⁵ This narrow interpretation is not supported by the statute or relevant case law.

The legislatively-created, comprehensive regulatory scheme requires all workers' compensation insurance policies and forms be filed and approved by the Insurance Commissioner. Section 11658 clearly states that all policies, as well as endorsements to an insurance policy, must be approved prior to use. Similarly, Insurance Code section 11750.3 instructs the WCIRB to review for legal compliance all "policies, daily reports, endorsements or other evidence of insurance." An endorsement is an amendment or modification of an existing policy that alters or varies *any term or condition* of the policy.²²⁶ While some endorsements make minor changes to a policy, other endorsements add or delete insureds or substantially change the premium charged.²²⁷ In light of such a comprehensive regulatory scheme, it is unreasonable to limit the filing requirements of section 11658 to endorsements that modify an insurer's indemnity obligations for loss or liability. Nothing in the language of section 11658, or the language of any other related statute or regulation, requires such a limited interpretation.

In addition, the Insurance Commissioner and the federal courts have rejected this narrow reading of section 11658. In *Zurich American Ins.*, the Insurance Commissioner explained that agreements that modify an insurer's choice of law, dispute resolution options, cancellation and default penalties or payment obligations constitute collateral agreements that must be filed and

²²⁵ Respondent's Post-hearing Opening Brief, pp. 38-39.

²²⁶ *Adams v. Explorer Ins. Co.*, *supra*, 107 Cal.App.4th at 450-451;

²²⁷ Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2002) ¶ 3:188, p. 3-50.

approved.²²⁸ The Insurance Commissioner's interpretation of section 11658 is clear and entitled to great weight.²²⁹ Similarly, in *American Zurich Insurance Co. v. Country Villa Serv. Corp.* (*Country Villa*), a California federal district court rejected the notion that filing requirements pertain only to agreements that modify indemnity obligations. Relying on the Insurance Commissioner's interpretation and previous case law, the federal court held that it was unreasonable to limit section 11658 to "the narrow sliver of an insurance agreement regarding only the insurers' indemnity obligation for loss or liability."²³⁰

Accordingly, CIC's contention is without merit.

2. RPA Modifies the Terms of the Guaranteed Cost Policy

Contrary to CIC's assertion, the RPA modifies a number of guaranteed cost policy provisions, namely, the rates charged, the choice of law and dispute resolution requirements, non-renewal penalties and early cancellation fees. In fact, where the RPA and the guaranteed cost policy differ, the RPA terms supplant those of the guaranteed cost policy.²³¹

There is no question that the guaranteed cost policy rates charged per \$100 of payroll differ from those charged under the EquityComp program. In policy year 2010, the guaranteed cost policy quoted \$17.77 per \$100 of payroll for classification 2585, while the RPA quoted \$18.68 for that same policy year. This same discrepancy can be seen in policy years 2011 and 2012. And there is no question that the rates Shasta Linen paid to CIC were not those quoted under the guaranteed cost policy and approved by the Commissioner. First, the EquityComp Proposal itself notes that the applicable rates are the "loss pick containment rates" charged under

²²⁸ *In the Matter of Zurich American Insurance Company, supra*, DISP-2011-0081 at pp. 10-12.

²²⁹ *Ass'n for Retarded Citizens v. Dep't of Developmental Serv.* (1985) 38 Cal.3d 384, 391.

²³⁰ *American Zurich Ins. Co. v. Country Villa Serv. Corp., supra*, 80 Cal. Comp. Cases 687, 703.

²³¹ Tr. 1329:9-18.

the RPA and not those quoted in the guaranteed cost policy.²³² Second, all witnesses agree that the RPA terms governed Shasta Linen's payments under the policy and plan. Both Dr. Levine and Ms. Gardiner detailed Shasta Linen's costs under EquityComp. Those calculations incorporated the RPA's loss pick containment rates and not the rates quoted under the guaranteed cost policy.²³³ In addition, the EquityComp Sales Manager testified that the terms of EquityComp and the RPA supplant those of the guaranteed cost policy.²³⁴ In fact, the policy terms are irrelevant in determining the premium and fees under the RPA.²³⁵ Third, while the guaranteed cost policy applies an employer's experience modification factor in calculating premium, EquityComp specifically excludes this mandatory factor.²³⁶ The effect is yet another change in an employer's rate and overall premium. Although CIC asserts RPA costs and fees do not constitute "rates" or "premium," this argument is simply erroneous.

The RPA also presents a dispute resolution and choice of law provision intended to supersede those of the guaranteed cost policy. Disputes under the guaranteed cost policy are exclusively governed by section 11735, subdivision (f), which provide for an evidentiary hearing by the CDI. Language outlining this right is mandated by the Insurance Code and must be included in each workers' compensation policy. No provision is made for binding arbitration, and disputes are governed by California law. But the RPA modifies these rights. The RPA and the Request to Bind provide for binding arbitration of disputes. And such disputes are exclusively heard in the British Virgin Islands using Nebraska law. This modification is extremely disconcerting since the Insurance Code prohibits the use of arbitration provisions

²³² Exh. 201-4.

²³³ Exh. 75; Exh. 279.

²³⁴ Tr. 1350:2-12.

²³⁵ Tr. 318:23-25.

²³⁶ The Commissioner notes for the record that a failure to apply an employer's experience rating factor in calculating premium constitutes a violation of Insurance Code section 11734, subdivision (c).

without written notice to the policyholder that such a provision is negotiable.²³⁷ In addition, it is clear the RPA's dispute resolution and choice of law provisions are meant to replace those of the guaranteed cost policy. In fact, CIC's witnesses could not conceive of a dispute that would fall under the guaranteed cost policy.²³⁸

Enrollment in EquityComp also significantly alters the guaranteed cost policy's early cancellation terms. While the guaranteed cost policy must include statutory early cancellation provisions, the RPA specifies its own, unapproved, early cancellation penalty. The difference between these two contractual provisions can be illustrated monetarily. An employer with \$300,000 in premium, who cancels their guaranteed cost policy after 100 days, is liable for \$114,000. That same employer, if enrolled in EquityComp, would be liable for more than \$1.1 million if they chose to cancel their EquityComp enrollment or the underlying CIC guaranteed cost policy after only 100 days.

Lastly, the RPA applies a non-renewal penalty disfavored by the Insurance Code. After a guaranteed cost policy expires, an employer is free to select a new insurer without penalty or restriction. That is not the case for those who enroll in EquityComp. The RPA's terms and obligations continue long after the end of the three-year program term. After EquityComp expires, all of a participant's open and closed claims are subjected to run-off LDFs which

²³⁷ Ins. Code § 11658.5 states as follows:

(a)(1) An insurer that intends to use a dispute resolution or arbitration agreement to resolve disputes arising in California out of a workers' compensation insurance policy or endorsement issued to a California employer shall disclose to the employer, contemporaneously with any written quote that offers to provide insurance coverage, that choice of law and choice of venue or forum may be a jurisdiction other than California and that these terms are negotiable between the insurer and the employer. The disclosure shall be signed by the employer as evidence of receipt where the employer accepts the offer of coverage from that insurer.

(2) After compliance with paragraph (1), a dispute resolution or arbitration agreement may be negotiated by the insurer and the employer before any dispute arises.

(b) Nothing in this section is intended to interfere with any authority granted to the Insurance Commissioner under current law.

(c) Failure by the insurer to observe the requirements of subdivision (a) shall result in a default to California as the choice of law and forum for resolution of disputes arising in California.

²³⁸ Tr. 875:7-11; Tr. 1329:9-18.

significantly increase a participant's financial obligations. After the expiration of a guaranteed cost policy, a participant owes nothing to the carrier. For Shasta Linen, this difference was significant. At the expiration of the EquityComp program, Shasta Linen received a bill for nearly \$250,000. If only the terms of the guaranteed cost policy applied, Shasta Linen would owe nothing. This provision also serves to penalize California employers who choose to switch insurance carriers. Run-off LDFs apply only to those employers who choose not to renew their EquityComp enrollment. Essentially, CIC penalizes those employers who are dissatisfied for whatever reason. Such a penalty is also contrary to public policy. As an analogy, the ALJ considers the rules regarding dividend distribution. Under California Code of Regulations, title 10, section 2507.2, an insurer may not restrict the payment of a policyholder's dividend due to the policyholder's failure to accept renewal of the policy or subsequent policies offered by the same insurer. Such a practice is coercive and illegal and constitutes an unfair practice.²³⁹

In sum, the RPA alters the underlying rates, costs and fees of an insurance policy, as well as the choice of law, dispute resolution and cancellation terms. As such, it is by definition a collateral agreement pursuant to California Code of Regulations, title 10, section 2268.

3. Case Law Requires Filing of the RPA

Case law also supports a finding that the RPA constitutes a collateral agreement under the Insurance Code.

A California federal court reiterated the Insurance Commissioner's directive regarding collateral agreements. In *Country Villa*, Zurich and Country Villa were parties to seven consecutive workers' compensation insurance policies. Each of the policies contained a standard-form provision that stated: "The terms of this policy may not be changed or waived

²³⁹ *Ibid.*

except by endorsement issued by us to be part of the policy.”²⁴⁰ Zurich and Country Villa then entered into a 20-page Incurred Deductible Agreement (IDA) which by its own terms “supersedes any Deductible endorsements to the Policy(ies), prior communications, negotiations, participating plans or letters of election.” The IDA defined policy terms related to Country Villa’s cost obligations, created a new aggregate deductible and further stated that policy and “all endorsements, extensions, renewals and/or rewrites” are subject to the terms of the IDA.²⁴¹ Zurich did not file the IDA with the WCIRB nor did it seek approval from the Insurance Commissioner. Country Villa sought a judicial declaration that the IDA was void and unenforceable under California law as it was not filed pursuant to Insurance Code section 11658 and Regulation 2268. Zurich argued the IDAs were mere financial agreements with the “primary purpose” of securing Country Villa's deductible obligations under the Large Deductible agreements attached to the insurance policies.²⁴²

The federal court held that the IDAs could not be understood as a financial agreement separate from the underlying insurance policy but instead as an agreement that changes the policy’s terms.²⁴³ The court further noted that the policy language and the IDAs establish that the IDAs are part of the insurance program created by the policies. Specifically, the policies state that a later issued endorsement may change or waive the terms of the policy, and the IDAs state that the “Policy(ies) ... including all endorsements, extensions, renewals and/or rewrites” are “subject to” the IDA.²⁴⁴ Accordingly, Zurich’s failure to file the IDA constituted a violation of the Insurance Code.

The facts herein are similar to those in *Country Villa*. CIC initially sold Shasta Linen a

²⁴⁰ *American Zurich Ins. Co. v. Country Villa Service Corp.*, *supra*, 80 Cal. Comp. Cases 687, 689.

²⁴¹ *Id.* at 690.

²⁴² *Id.* at 700.

²⁴³ *Id.* at 708.

²⁴⁴ *Ibid.*

guaranteed cost policy approved by the Insurance Commissioner. Immediately after entering into this insurance contract, CIC required that Shasta Linen execute the 10-page RPA – a separate side agreement that modified the payment obligations, dispute resolution mechanism, choice of law and underlying rates. CIC did not file this separate agreement with the WCIRB or seek approval from the Insurance Commissioner. Instead, CIC argues the RPA merely outlines the profit-sharing mechanism and does not affect policy rates. But like the unlawful side agreements in *Country Villa*, the terms of the side agreement supersede those of the policy and as such must be, but were not, approved by the Commissioner.

4. CIC's Policy Terms Required the RPA to be Endorsed

By the terms of CIC's own policy with Shasta Linen, CIC was required to endorse the RPA to the policy. CIC engaged AUCRA through the reinsurance treaty to provide to CIC's policyholders the EquityComp program and ceded these policyholders to AUCRA by means of the treaty.²⁴⁵ However, CIC stated in both its policy and in the attached Policy Amendatory Endorsement—California, that the insurance policy with Shasta Linen was the sole insurance agreement, the terms could not be changed or waived except by endorsement issued by CIC, and that no other agreement not set forth in the policy or by endorsement shall affect the insurance contract or any rights, duties, or privileges arising from it.²⁴⁶

CIC participated in setting up an arrangement by reinsurance treaty, filed with the Department, to move its EquityComp policyholders to the arrangements handled by AUCRA, which circumvented the insurance rates and policy terms without abiding by its own insurance contract. By CIC's own policy terms, such an arrangement, despite initially characterizing it as reinsurance to the Department and then characterizing it as profit-sharing, should have been

²⁴⁵ Exh. 232

²⁴⁶ Exhs 208, 209, and 210

endorsed to its policies. Based upon the patent filed for the EquityComp program, by Applied Underwriter, Inc., the parent company of both CIC and AUCRA, CIC had no intention of endorsing the arrangement to its policies, since the sole purpose of its EquityComp program and arrangements with AUCRA was to circumvent the necessary regulatory checks-and-balances needed in a comprehensive state workers' compensation system to protect insurers, employers, and injured workers and assure financial accountability, fairness, and non-discriminatory treatment of insureds.²⁴⁷

C. EquityComp and the RPA Create a Non-Linear Retrospective Rating Plan

Any lingering questions regarding the operation of EquityComp and the RPA are answered by AU's patent application and witness testimony.

1. AU's Patent Calls the RPA a Non-Linear Retrospective Rating Plan

AU's patent application puts to rest any remaining doubt about the nature of the EquityComp program. Although CIC distinguishes the RPA from other loss-sensitive programs, AU's patent application clearly states, on more than one occasion, that EquityComp and the RPA create a non-linear, retrospective rating plan.²⁴⁸ For example, AU states the RPA is "a reinsurance based approach to providing non-linear retrospective plans to insureds that may not have the option of such a plan directly."²⁴⁹ Under the RPA, "the insured can now, in effect, have a retrospective rating plan because of the arrangement among the insurance carrier, the reinsurance company and the insured even though, in fact, the insured has Guaranteed Cost insurance coverage with the insurance carrier."²⁵⁰ AU's own admissions lead to only one conclusion; EquityComp and the RPA create a non-linear, retrospective rating plan.

²⁴⁷ ALJ Exh. 1

²⁴⁸ ALJ Exh. 1, column 4, lines 62-63:

²⁴⁹ ALJ Exh. 1, column 6, lines 39-42.

²⁵⁰ ALJ Exh. 1, column 7, lines 42-54.

In addition, AU clearly states its objective in creating the RPA was to circumvent governmental regulators who restrict the sale of retrospective rating plans and who scrutinize carefully any new rating plans. But, to the extent that any participation plan modifies the terms of a guaranteed cost policy, it must be filed with WCIRB and approved by the Insurance Commissioner. And since AU defines the RPA as a retrospective rating plan, it follows that it must be filed with WCIRB and approved by the Insurance Commissioner.

CIC acknowledges that loss sensitive plans, including retrospective rating plans, must be filed with the WCIRB, approved by the Insurance Commissioner and attached as endorsements to a guaranteed cost policy.²⁵¹ Failure to do so renders the plans unlawful. The Insurance Commissioner finds no reason to ignore AU's own description of the RPA. As the RPA creates a non-linear retrospective rating plan, it must be filed and approved by the Commissioner pursuant to 11735 before use in this State.

2. EquityComp is Not a Fronting Arrangement

Contrary to the statements made in the patent application, CIC now argues EquityComp is merely a captive fronting agreement and as such, need not be filed and approved by the two regulatory agencies.²⁵² This argument both ignores the patent and mischaracterizes witness testimony.

A "fronting" policy is a policy which does not indemnify or defend the insured but which is issued to satisfy financial responsibility laws of various jurisdictions "by guaranteeing to third persons who are injured that their claims against" the insured will be paid.²⁵³ For example, in the area of reinsurance, an admitted insurer may agree to issue a primary policy with the

²⁵¹ Tr. 875:2-4.

²⁵² Respondent's Post-hearing Opening Brief, 28:7-30:11.

²⁵³ *Aerojet-Gen. Corp. v. Transp. Indem. Co.* (1997) 17 Cal. 4th 38, 50; *Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (1991) 231 Cal.App.3d 457, 471.

understanding that a non-admitted insurer will reinsure the entire risk. The admitted insurer typically receives a fee or a small percentage of the premium for serving as a “front” for the non-admitted insurer.

Nothing in the facts presented indicates EquityComp is a captive fronting arrangement. While CIC points to the testimony of Dr. Levine and Mr. Avagliano as evidence of a fronting arrangement, it is telling that neither Ms. Gardiner, AU’s Chief Actuary, Mr. Watson, the EquityComp Sales Manager, or Mr. Silver, CIC’s General Counsel described EquityComp as a fronting arrangement. In making this argument, CIC also mischaracterizes Dr. Levine’s testimony. First, Dr. Levine indicated that participants to a fronting arrangement are attempting to functionally create self-insurance in situations where the employer would not qualify as a licensed self-insurer.²⁵⁴ Rather than portraying EquityComp as a fronting arrangement, Dr. Levine testified that EquityComp and the RPA substantially alter the terms of the guaranteed cost policy such that the CIC policy is meaningless. Dr. Levine further testified that in his opinion the RPA constituted a collateral agreement and as such must be filed and approved by the Insurance Commissioner.²⁵⁵

In addition, the EquityComp program does not merely cede the risk under the guaranteed cost policy to a captive reinsurer, as is typical in a fronting arrangement. Instead, the RPA modifies the rates charged and premium paid, reallocates risk to the insured, alters the cancellation terms, forces binding arbitration of disputes and implements non-renewal penalties. These modifications do not describe a fronting arrangement, but rather a collateral agreement that modifies the guaranteed cost insurance policy.

²⁵⁴ Tr. 457:7-23. Tr. 459:13-14.

²⁵⁵ Tr. 450:15-452:4.

D. CDI's Financial Audits Do Not Constitute Approval of Unfiled Agreement

CIC also contends that prior CDI financial examinations reviewed the EquityComp program and the RPA, and constitute approval under the Insurance Code.²⁵⁶ CIC's argument can be summarized as follows; since the examinations were silent with regard to EquityComp and the RPA, the CDI tacitly approved the RPA and EquityComp. This argument again ignores the clear mandate of Insurance Code section 11658 and mischaracterizes CDI's financial and market conduct reports.

Insurance Code section 11658 sets a clear mandate for insurers. All policy, forms and endorsements must be filed with the WCIRB and approved by the Insurance Commissioner prior to use. The Insurance Code does not permit insurers to sell unfiled and unapproved policies nor is the regulatory scheme furthered by implicit approval. Unapproved policies and forms do not become lawful over time, regardless of the number of examinations conducted.

In addition, CIC mischaracterizes the CDI's reports. All three financial examinations reviewed CIC's assets and liabilities, and evaluated CIC's prospective risks. Financial examiners did not review the RPA or confirm compliance with section 11658. The financial examinations make only passing references to EquityComp, and evaluation of EquityComp was well beyond the exam's scope. The Market Conduct report's silence is equally unpersuasive. The purpose of a market conduct audit is to evaluate an insurance carrier's general operating procedures.²⁵⁷ The audit does not require the review and approval of side agreements, such as the RPA. Indeed, CIC's legal conclusions are based entirely on conjecture and silence. CIC provided no evidence to support its contention that the CDI reviewed the RPA and found that it complied with the Insurance Code. CDI examiners did not testify during the evidentiary hearing

²⁵⁶ Respondent's Post-hearing Opening Brief, 30:12-37:18.

²⁵⁷ Cal. Code of Regs., tit. 10, § 2591.

nor did CIC make an evidentiary showing regarding the examination process. Accordingly, this argument is unsupported and without merit.

E. The RPA is an Illegal Contract and Void as a Matter of Law

Having determined the RPA to be an unfiled collateral agreement, CIC lastly contends the Insurance Commissioner lacks authority to void the RPA's application to Shasta Linen. CIC contends the Commissioner may only issue a prospective order to stop the use of an unfiled rate after a separate hearing on the merits of the RPA. This argument ignores the fact that the RPA is void as a matter of law, as indicated by the legislature's comprehensive regulatory scheme and relevant case law.

1. Statutory Scheme Supports RPA is Void as a Matter of Law

As detailed above, the RPA modifies the rates and rating plan sold to Shasta Linen by CIC. Nothing in section 11737, subdivision (f) limits the Insurance Commissioner's authority to remedy such violation where a policyholder is aggrieved or to make conclusions regarding items that are as a matter of law. Insurance Code section 11658 states that a workers' compensation insurance policy or endorsement "*shall* not be issued by an insurer" unless it is filed with the WCIRB and in one way or another approved by the Insurance Commissioner, and subsection (b) states that issuing an unapproved policy or endorsement "is unlawful." Section 11658 is clear: the unfiled and unapproved RPA is illegal under section 11658 and therefore void as a matter of law.²⁵⁸

Subdivision (a) of Insurance Code section 11735 requires all rates and supplementary rating information to be filed in this state before use and 30 days transpire before their effective date. The modifications of the Shasta Linen's rates or rating plan as a result of the RPA's re-

²⁵⁸ *Kremer v. Earl* (1891) 91 Cal. 112 (stating that "[i]t is not necessary that the act itself ... declare in express words" that a contract in violation of the act is "void"); see also *American Zurich Ins. Co. v. Country Villa Serv. Corp.*, *supra*, 80 Cal. Comp. Cases 687, 709.

rating process also support the conclusion that the RPA is void as a matter of law.²⁵⁹

In addition, if upon a review of the legislative scheme, a contract appears to contravene the design and policy of the laws, a court of equity will not enforce it.”²⁶⁰ By its own admission, AU designed EquityComp and the RPA to circumvent workers’ compensation policy. It would defeat the statutory purpose to allow CIC to bypass the governmental review process by simply waiting until after the insurance policy has gone into effect to introduce additional or modified terms to its insurance program. Workers’ compensation insurance is mandatory and California employers expect the statute’s protection. CIC knew of the review and pre-approval process and deliberately ignored that process with regard to the RPA. It cannot now argue that the Insurance Commissioner should permit the use of an unapproved rate.

As noted above, the legal requirement for modifying any workers’ compensation insurance obligation is to endorse the agreement to the insurance policy.²⁶¹ This is done by filing the agreement with the WCIRB, which in turn will file it with the Insurance Commissioner, and endorse it to the insurance policy after the requisite time or approval.²⁶² Unfiled side agreements are prohibited and shall not be used without complying with these requirements; otherwise, they are not permitted in this state and are void as a matter of law.²⁶³

2. Case Law Supports RPA is Void as a Matter of Law

CIC’s argument is also devoid of case law support and ignores case law directly on point.

In *Country Villa*, discussed *ante*, the federal court using California law, determined that Zurich’s failure to file the IDA with the WCIRB and the Insurance Commissioner violated Insurance Code section 11658. The court held the proper remedy for such a violation was to find

²⁵⁹ *Ibid.*

²⁶⁰ *Kremer v. Earl, supra*, 91 Cal. 112.

²⁶¹ Title 10 CCR § 2268.

²⁶² See Ins. Code § 11658.

²⁶³ Ins. Code § 11658; *American Zurich Ins. Co. v. Country Villa Serv. Corp, supra*, 80 Cal. Comp. Cases 687, 695.

the IDAs void and unenforceable.²⁶⁴ In so holding, the district court stated that unfiled and unapproved side agreements are illegal and void as a matter of law. As such, the Commissioner's determination that the RPA is void as a matter of law, is amply supported by analogous case law.

3. No Compelling Reason Exists to Enforce RPA

In compelling cases, California courts will enforce illegal contracts "in order to avoid unjust enrichment and a disproportionately harsh penalty upon the plaintiff."²⁶⁵ The extent of enforceability and the remedy granted depend upon a variety of factors, including the policy of the transgressed law, the type of illegality, and the particular facts. Application of these factors to the RPA supports the conclusion that the RPA should not be enforced.

First, the Insurance Code requires full disclosure, review, and approval for workers' compensation policies in order to safeguard California consumers from discriminatory, unsupported, or exploitative rates and to prevent monopolies. Shasta Linen is exactly the type of California employer the statutory scheme is meant to protect. It would defeat the statute's purpose to permit CIC and its affiliated companies to sell EquityComp and the RPA without regulatory approval and oversight. Indeed, it would be directly contrary to sections 11658 and 11735 to allow an insurance company to bypass the regulatory review process by waiting until after the policy has gone into effect to introduce additional or modified terms to its insurance program.²⁶⁶

Second, there is no risk of *unjust* enrichment by Shasta Linen. An insurer's issuance of an illegal contract, even if it results in enrichment to the insured, does not result in *unjust*

²⁶⁴ *American Zurich Ins. Co. v. Country Villa Serv. Corp.*, *supra*, 80 Cal. Comp. Cases 687, 695.

²⁶⁵ *Malek v. Blue Cross of Cal.* (2004) 121 Cal.App.4th 44, 70; *Asdourian v. Araj* (1985) 38 Cal.3d 276, 291.

²⁶⁶ *American Zurich Ins. Co. v. Country Villa Serv. Corp.*, *supra*, 80 Cal. Comp. Cases 687, 710.

enrichment, since the insured did nothing wrong.²⁶⁷ And if the RPA is void, Shasta Linen remains liable to CIC under the guaranteed cost policies for the agreed-upon premium and fees based upon the applicable filed rates.

Third, denying enforcement of the void RPA is not unduly harsh. CIC knew California's filing requirements for policies and endorsement and chose not to seek the required regulatory approval. Permitting CIC to enforce the illegal RPA would encourage illegal activity by it and other insurers, run contrary to the workers' compensation insurance system, and would be an abdication of the Commissioner's regulatory oversight.

Finally, CIC is not blameless since it created a product to circumvent California's statutory and regulatory requirement; a product that ultimately enriched CIC at the expense of California employers. It would not be equitable to allow the party who created the illegality to enforce the illegal contract.²⁶⁸

Shasta Linen argues it should be liable only for the claims paid during the duration of the three-year program. Shasta Linen provides no support for this contention, nor does Shasta Linen explain why the Insurance Commissioner should bar enforcement of the guaranteed cost policy. Shasta Linen is not legally self-insured, it has a guaranteed cost policy with CIC, and it should pay the appropriate insurance premium based upon the filed rates applicable to Shasta Linen. Any additional remedies to which Shasta Linen is entitled based upon CIC's conduct are outside the scope of this proceeding.

²⁶⁷ *Id.* at 709.

²⁶⁸ *American Zurich Ins. Co. v. Country Villa Serv. Corp., supra, Id.* At 710.

VIII. Conclusion

Pursuant to California Code of Regulations, title 10, section 2509.61, subdivision (a), a “party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he or she is asserting.”

Based on the foregoing findings of facts and conclusions of law, the Insurance Commissioner finds by a preponderance of the evidence that Shasta Linen met its burden of proof in demonstrating that it is aggrieved by CIC’s misapplication of its filed rates as a result of an unfiled and unapproved collateral agreement that modified the terms and conditions of the guaranteed cost policy, in violation of Insurance Code sections 11737 and 11658 and California Code of Regulations, title 10, section 2268.

Further, CIC’s EquityComp program’s Reinsurance Participation Agreement constitutes a collateral agreement modifying the rates and obligations of the insured and the insurer, and is void as a matter of law since it was required to be filed with the Workers’ Compensation Insurance Rating Bureau and filed with the Department of Insurance before its use in the State of California, pursuant to Insurance Code section 11658 and California Code of Regulations, title 10, sections 2268 and 2218.

ORDER

1. Shasta Linen is responsible only for the premium and costs associated with the three guaranteed cost policies issued on January 1, 2010, January 1, 2011 and January 1, 2012 and the rates applicable to those policies. To the extent that Shasta Linen has remitted to CIC funds in excess of the amounts under the guaranteed cost policy, CIC shall refund that amount, including all amounts held in Shasta Linen’s captive cell, within 30 days of the date of this decision;

2. The entirety of this Decision and Order is designated precedential pursuant to Government Code section 11425.60, subdivision (b), and;

3. Pursuant to Government Code section 11519, this Decision shall be effective immediately.

IT IS SO ORDERED.

DATED: June 20, 2016



DAVE JONES
Insurance Commissioner

Exhibit 2

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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Certificates of
Authority of

CALIFORNIA INSURANCE COMPANY
and APPLIED UNDERWRITERS
CAPTIVE RISK ASSURANCE
COMPANY, INC.

Respondents.

File No.: MI-2015-00064

STIPULATED CONSENT CEASE AND
DESIST ORDER

The California Department of Insurance (CDI), Respondent California Insurance Company (CIC) and Respondent Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA) enter into this Stipulated Consent Cease and Desist Order (Consent Order) and CIC and AUCRA¹ consent to the issuance of this Consent Order by the Insurance Commissioner pursuant to the terms set forth below.

I.
MATTERS IN THIS PROCEEDING

A. CIC and AUCRA each acknowledge service and receipt of the Notice of Hearing and Order to Cease and Desist from Issuance or Renewal of Workers' Compensation Insurance Policies and Collateral/Ancillary Agreements in Violation of Insurance Code §§11658 and 11735 and California Code of Regulations, Title 10, Sections 2251 and 2268 dated June 28, 2016 (the Notice) and acknowledge service and receipt of the Amended Notice of Hearing and Order to Cease and Desist from Issuance or Renewal of Workers' Compensation Insurance Policies and

¹ Nothing in this Consent Order shall be construed as an admission by CDI that CIC and AUCRA are not a single entity for purposes of the Commissioner's Order in *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, CDI File No. AHB-WCA-14-31.

1 Collateral/Ancillary Agreements in Violation of Insurance Code §§11658 and 11735 and
2 California Code of Regulations, Title 10, Sections 2251 and 2268 dated July 13, 2016 (the
3 Amended Notice).

4 B. CIC and AUCRA deny the allegations set forth in the Notice and the Amended Notice
5 but in lieu of proceeding with a hearing on the Amended Notice on July 27, 2016, agree to the
6 terms set forth in this Consent Order.

7 C. The CDI, CIC and AUCRA agree that the terms of this Consent Order do not
8 constitute an admission or agreement by CIC or AUCRA as to matters alleged in the Notice and
9 the Amended Notice.

10 II

11 RECITALS

12 A. The Notice and Amended Notice allege that CIC issued guaranteed cost workers'
13 compensation insurance policies (Guaranteed Cost Policies) that required the employer/insured to
14 enter into a Reinsurance Participation Agreement (RPA) with AUCRA.

15 B. The Insurance Commissioner issued a Decision & Order in *In the Matter of the Appeal*
16 *of Shasta Linen Supply, Inc.*, CDI File No. AHB-WCA-14-31 (*Shasta Linen*), which stated that
17 the RPA issued to Shasta Linen Supply, Inc. in connection with a Guaranteed Cost Policy was
18 illegal and void because it is an unfiled and unapproved collateral agreement that was not filed
19 with the California Workers' Compensation Insurance Rating Bureau (WCIRB) and the CDI in
20 compliance with Insurance Code §§11658 and 11735 and California Code of Regulations, Title
21 10, §2268 and former §2218.

22 C. The Decision and Order in *Shasta Linen* was made precedential pursuant to
23 Government Code §11425.60(b).

24 D. CIC disagrees with the findings in the *Shasta Linen* Decision & Order and it has filed
25 a Verified Petition for a Peremptory Writ of Mandate and Complaint for Declaratory and
26 Injunctive Relief, Los Angeles County Superior Court Case No. BS 163243 (the Writ
27 Proceeding), which challenges the *Shasta Linen* Decision & Order.

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1 III

2 DEFINITIONS

3 A. The term RPA means (i) the RPA form issued to Shasta Linen Supply, Inc. that was
4 the subject of the Decision & Order in *Shasta Linen* for which the current term of the RPA has
5 not expired or (ii) any form of RPA that is substantially similar to the RPA issued to Shasta Linen
6 Supply, Inc. and that is ancillary or collateral to a guaranteed cost workers' compensation
7 insurance policy that covers claims by California workers arising within locations in California
8 and/or employees employed in facilities in California, or workers whose employment is otherwise
9 covered under California workers' compensation laws, regardless of where CIC and an employer
10 entered the contract for which the current term of the RPA has not expired. This definition
11 excludes non-California employees that are covered by a non-California workers' compensation
12 policy.

13 B. The term "Policy" or Policies" means (i) a Guaranteed Cost Policy or Policies for
14 which an RPA is in force as of July 1, 2016 (that is, the current term of the RPA has not expired)
15 and (ii) Guaranteed Cost Policies that cover claims by California workers, arising within locations
16 in California and/or employees employed in facilities in California or workers whose employment
17 is otherwise covered under California workers' compensation laws, regardless of where CIC and
18 an employer entered the contract, for which the RPA expired between the date of the Notice and
19 the date of this Consent Order (hereinafter, "California Policy"). This definition excludes non-
20 California employees that are covered by a non-California workers' compensation policy.

21 IV

22 AGREEMENT

23 A. CIC and AUCRA will cease and desist from issuing new RPAs or renewing existing
24 RPAs with respect to a California Policy until such time as the RPA has been submitted to the
25 WCIRB and the CDI in compliance with the requirements of Insurance Code §11658 and §11735
26 and all other applicable statutes and regulations, and the RPA has not been disapproved.

27 B. Notwithstanding Paragraph IV (A) above, CIC may renew a Policy issued in
28 connection with an RPA in force as of July 1, 2016.

1 C. Arbitrations under either an RPA that is currently an in-force RPA or a past RPA
2 entered into or issued in California will take place in California.

3 D. CIC and AUCRA will not apply run-off loss development factors to any Policy at any
4 time, including upon termination, cancellation or nonrenewal of the RPA or upon termination,
5 cancellation or nonrenewal of the Policy. The term "run-off loss development factor" means the
6 run-off loss development factor referred to in RPA Schedule 1, Paragraph 4.

7 E. CDI actuaries, on the one hand, and CIC and AUCRA actuaries on the other hand, will
8 immediately meet and confer for the purpose of determining and agreeing upon modified loss
9 development factors (LDFs) to be used in connection with the Policies. Upon agreement among
10 the actuaries as to modified LDFs, which may include the current LDFs, those LDFs will apply to
11 the Policies and RPAs.

12 F. If CDI actuaries and CIC and AUCRA actuaries are able to agree on modified LDFs,
13 as referred to in Paragraph (IV) (E), then no hearing will be held on the Amended Notice, and this
14 matter will be concluded. If the CDI actuaries and CIC and AUCRA actuaries are unable to agree
15 on modified LDFs, or if the Insurance Commissioner does not approve an agreement by the
16 parties, the hearing on the Amended Notice will proceed on September 2 and September 9, 2016,
17 or such other or continued hearing date agreed upon by CDI, CIC, AUCRA, and the
18 Administrative Hearing Bureau (AHB), or as set by AHB.

19 G. If an agreement among actuaries as specified in Paragraph IV (F) is not reached, CIC
20 and AUCRA agree that nonetheless the amendments to RPAs that are specified in Paragraph IV
21 (C) and IV (D) of this Consent Order will nevertheless remain in force.

22 H. Notwithstanding Article IV. A, AUCRA may issue or renew RPAs and CIC may issue
23 or renew Guaranteed Cost Policies in connection with RPAs if a final judgment has been entered
24 in the Writ Proceeding which determines that (i) the RPA is not a collateral or ancillary
25 agreement subject to the requirements of Insurance Code §11658 and applicable regulations; (ii)
26 the RPA is not subject to the filing requirements of Insurance Code §11735; and (iii) the RPA is
27 not otherwise subject to filing requirements of the Insurance Code.

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1 I. If CIC or AUCRA obtain a preliminary injunction in the Writ Proceeding on the
2 grounds specified in Paragraph IV (H), above, CIC and AUCRA agree to meet and confer with
3 the CDI to determine whether such relief should cause the parties to agree to stay this Consent
4 Order pending the outcome of the Writ Petition on the merits. CIC and AUCRA acknowledge
5 that the CDI does not concede that injunctive relief is an appropriate remedy in the Writ
6 Proceeding.

7 J. If a final judgment of the nature specified in Paragraph IV (H) above is entered, CIC
8 and AUCRA nonetheless agree that the amendments to RPAs that are specified in Paragraph
9 IV(C) and IV(D) of this Consent Order will remain in force, and (ii) if CDI actuaries and CIC and
10 AUCRA actuaries agree upon loss development factors as provided for in Paragraph IV(E)
11 below, the agreed upon loss development factors will continue to apply to any RPA currently in
12 force at the time of this Consent Order.

13 K. CIC and AUCRA will recalendar the date for hearing on the Notice of Motion and
14 Motion for Stay of Administrative Order filed in the Writ Proceeding (Motion for Stay) for on or
15 after September 30, 2016. If a hearing on the Amended Notice has not concluded by September
16 30, 2016, and has not otherwise been settled, CIC and AUCRA will continue the hearing date on
17 the Motion for Stay by thirty days, and such additional time thereafter as will ensure that a
18 renounce of the hearing would both be served after the hearing on the merits of the Amended
19 Notice has concluded, and comply with sections 1005 and 1013 of the Code of Civil Procedure.
20 Furthermore, prior to such renounce, CDI, on the one hand, and CIC and AUCRA on the other
21 hand, will confer as to the relief sought by CIC and AUCRA in the Motion for Stay to ensure that
22 any stay order that may be issued does not modify or negate any of the terms of this Consent
23 Order.

24 L. This Consent Order only pertains to the proceeding noticed and matters set forth in the
25 Amended Notice and it does not pertain to the Writ Petition or *Shasta Linen*, and nothing in this
26 Consent Order constitutes a waiver of CIC's or AUCRA's rights to pursue the Writ Proceeding or
27 other relief pertaining to *Shasta Linen* (except as limited by Paragraph H above.)
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1 M. Nothing in this Consent Order prevents CIC from issuing standalone Guaranteed Cost
2 Policies that have been submitted to the WCIRB and the CDI and which have not been
3 disapproved. The term "standalone" means a Guaranteed Cost Policy for which no RPA is
4 entered into.

5 N. Nothing in the Consent Order limits or affects the rights of the Insurance
6 Commissioner in connection with the Writ Petition or *Shasta Linen* and, except as otherwise
7 specified in Article IV. D, E, F, and J above, nothing in this Stipulated Agreement affects or
8 limits the powers or rights of the Insurance Commissioner to contend or declare that RPAs (other
9 than RPAs that are filed with the WCIRB and the CDI and that are not disapproved) are
10 unenforceable, void, voidable, or illegal and nothing limits the powers or rights of the Insurance
11 Commissioner to initiate or make any investigation, to institute any legal or administrative
12 proceeding, to take any action permitted by law, and to seek and obtain all relief and remedies
13 (including any fines or penalties), or to adjudicate the rights of others, as otherwise permitted by
14 law.

15 O. This Consent Order only applies to policies and RPAs covering loss exposures in
16 California, claims arising within locations in California and California workers. The Consent
17 Order is not intended to impact policies or RPAs relating to risks covered outside of California.

18 P. This Consent Order may be executed in counterparts, each of which shall constitute a
19 duplicate original. Execution by facsimile or by electronically transmitted signature shall be fully
20 and legally binding.

21 Q. CIC and AUCRA acknowledge that this Consent Order is a public record pursuant to
22 Government Code §6250 *et seq.* Pursuant to Insurance Code §12968, this Consent Order will be
23 posted on the CDI's internet website.

24 R. This Consent Order will be interpreted and construed in accordance with California
25 law, without regard to choice-of-law considerations.

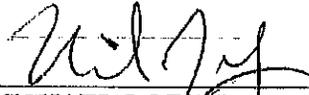
26 S. Respondents acknowledge that Insurance Code §12921(b) (1) requires the Insurance
27 Commissioner to approve the final settlement of this matter. The terms of this Consent Order are
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1 contingent upon the Insurance Commissioner's approval, which shall be evidenced by the Order
2 in substantially the form and content as set forth on page 8 hereof.

3 The CDI and Respondents CIC and AUCRA execute this Consent Order as follows:

4 Date: August 25 2016

CALIFORNIA DEPARTMENT OF INSURANCE

5
6 By: 
7 MICHAEL J. LEVY
8 DEPUTY GENERAL COUNSEL

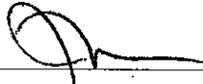
9 Date: August 25, 2016

CALIFORNIA INSURANCE COMPANY

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11 By: 
12 _____
13 Secretary
14 Title

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16
17 Date: August 25, 2016

APPLIED UNDERWRITERS CAPTIVE RISK
ASSURANCE COMPANY, INC.

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19 By: 
20 _____
21 Secretary
22 Title
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4 **[PROPOSED] ORDER ADOPTING**
5 **STIPULATED CONSENT CEASE AND DESIST ORDER**

6
7 **GOOD CAUSE HAVING BEEN SHOWN**, California Insurance Commissioner Dave
8 Jones hereby adopts the Stipulated Consent Cease and Desist Order set forth on pages 1 through 7
9 of this document, and hereby orders that the parties comply with the terms and conditions to
10 which they have agreed.
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Date: September 6, 2016



DAVE JONES
CALIFORNIA INSURANCE
COMMISSIONER

Exhibit 3

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made this 2nd day of June, 2017 by and between the CALIFORNIA DEPARTMENT OF INSURANCE ("CDI"), CALIFORNIA INSURANCE COMPANY, a California corporation ("CIC") and APPLIED UNDERWRITERS CAPTIVE RISK ASSURANCE COMPANY, INC., an Iowa corporation ("AUCRA"). CDI, CIC and AUCRA are each a "Party" and collectively the "Parties."

WHEREAS, on August 29, 2014 Shasta Linen Supply, Inc. ("Shasta Linen") filed an application with the CDI's Administrative Hearing Bureau ("AHB") pursuant to California Insurance Code (hereinafter the "Code") Section 11737(f) (the "Shasta Action"); and

WHEREAS, on November 20, 2015, the Administrative Law Judge ("ALJ") submitted her Proposed Decision and Order which was adopted by the Commissioner of the California Department of Insurance (the "Commissioner") on January 21, 2016; and

WHEREAS, on February 5, 2016, CIC filed its Petition For Reconsideration; and

WHEREAS, on February 17, 2016, Shasta Linen filed its Petition For Reconsideration; and

WHEREAS, on March 22, 2016, the Commissioner issued an Order Granting Reconsideration and Notice of Non-Adoption of the ALJ's Proposed Decision; and

WHEREAS, on June 20, 2016, the Commissioner issued a Decision and Order *In the Matter of the Appeal of Shasta Linen Supply, Inc.*, File AHB-WCA-14-31 (the "Shasta Order"); and

WHEREAS, on July 1, 2016, CIC and AUCRA filed a Verified Petition for a Peremptory Writ of Mandate and Complaint For Declaratory and Injunctive Relief in the Superior Court of the State of California For The County of Los Angeles at Case No. BS1163243 challenging the Commissioner's Shasta Linen Order (the "Writ Petition"); and

WHEREAS, in connection with the Writ Petition, CIC and AUCRA moved to stay the Shasta Order; and

WHEREAS, the Motion was submitted to the Court and after argument, the Court continued the hearing on the Motion to Stay until November 22, 2016; and

WHEREAS, CIC, AUCRA and the CDI entered into a Stipulated Consent Cease and Desist Order (the "Stipulated Order") whereby the Parties entered into certain agreements concerning the EquityComp® product in general and Reinsurance Participation Agreements ("RPA") in particular for loss exposures in California while at the same time preserving CIC and AUCRA's challenge to the Shasta Linen Order in the Writ Petition;

WHEREAS, the Dispute as defined in paragraph 1 of this Agreement is ultimately for the courts to decide; and

WHEREAS, the Parties wish to settle the Writ Petition as between them;

NOW, THEREFORE FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Good Faith Dispute. There is a good faith dispute between the Parties as to the Shasta Order, specifically as to the remedy authorized by the California Insurance Code and whether the RPA is void as a matter of law under the California Legislature's comprehensive regulatory scheme and relevant case law (the "Dispute").

2. Resolution of the Dispute. The Shasta Order applies to Shasta Linen Supply, Inc. and is based upon the facts and circumstances of the Shasta Action. The designation of the Shasta Order as precedential pursuant to California Government Code § 11425.60, subdivision (b) applies to administrative proceedings before the CDI in cases involving facts and circumstances substantially similar to those in the Shasta Action.

3. Amended RPA. CDI and AUCRA have met and discussed the Shasta Order and modification to the RPA and have agreed that the RPA, as modified (the "Amended RPA") is an agreement between a third party and the insured, and attached in form and substance as Exhibit 1, Form Number AUCRA—CAL 102 (3/17). The Amended RPA will be issued after execution of an Accredited Participant Acknowledgment and Disclosure (the "Acknowledgment") Form Number AUCRA—CAL 101 (5/17). The CDI by execution of this Agreement hereby approves the Amended RPA and Acknowledgment. AUCRA further agrees that it will not make any changes to the Amended RPA or Acknowledgment in the State of California without first submitting it to the CDI for review and approval. CIC and AUCRA agree to provide the AUCRA—CAL 101 and AUCRA—CAL 102 forms to any prospective insured prior to the inception date of the coverage.

4. CIC and AUCRA agree to dismiss the Writ Petition within ten (10) days of the execution of this Agreement. The CDI currently contemplates no additional action as to CIC or AUCRA related to the EquityComp® program. CIC, AUCRA on their own behalf and on behalf of their affiliated companies, AUI and ARS, each waive and agree to dismiss any claims and further agree that none of them shall bring or further pursue any actions or other proceedings against Shasta Linen Supply, Inc., its officers, employees or agents, seeking recovery or collection of any sums alleged to arise out of or claimed to be due from Shasta Linen Supply, Inc. under the EquityComp® program, including any of its component parts (RPA, Guaranteed Cost policies or either of them) that were marketed and sold to Shasta Linen Supply, Inc. as workers compensation coverage for the period 1/1/10 through 12/31/12.

5. Reservation. Nothing in this Agreement limits the power of the Commissioner to initiate any legal or 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.

6. California. This Agreement applies to policies and Amended RPAs covering loss exposures in California, claims arising within locations in California and California workers. The Agreement is not intended to impact RPAs relating to risks covered outside of California.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile or by electronically transmitted signature shall be fully and legally binding.

8. No Admission. This Agreement is (1) the compromise of disputed claims and fully and finally settles the Writ Petition; and (2) to buy peace and to prevent any further involvement between the Parties concerning the Writ Petition. Nothing contained in this Agreement, including, but not limited to the filing of the Amended RPA and Acknowledgment shall be interpreted or construed to be an admission on the part of, nor to the prejudice of any Party hereto.

9. Public Record. CIC and AUCRA acknowledge that this Agreement is a public record pursuant to Government Code §6250 *et seq.* Pursuant to Insurance Code §12968, this Agreement will be posted on the CDI's Internet website.

10. Applicable Law. This Agreement will be interpreted and construed in accordance with California law, without regard to choice-of-law considerations.

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11. Commissioner Approval. CIC and AUCRA acknowledge that Insurance Code §12921(b)(1) requires the Commissioner to approve the final settlement of this matter. The terms of this Agreement are contingent upon the Commissioner's approval, which shall be evidenced by his signature to this Agreement.

The Parties execute this Agreement as follows:

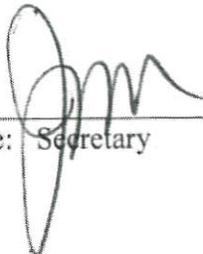
Date: 6/7/17, 2017

CALIFORNIA DEPARTMENT OF INSURANCE

By: 
DAVE JONES, Commissioner

Date: 6/2, 2017

CALIFORNIA INSURANCE COMPANY

By: 
Title: Secretary

Date: 6/4, 2017

APPLIED UNDERWRITERS CAPTIVE RISK
ASSURANCE COMPANY, INC.

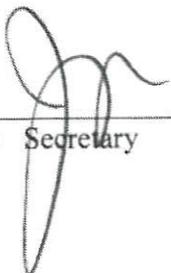
By: 
Title: Secretary

Exhibit 4

REPORT OF EXAMINATION
OF THE
CALIFORNIA INSURANCE COMPANY
AS OF
DECEMBER 31, 2017

FILED ON MAY 17, 2019

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Sacramento, California
April 04, 2019

Honorable Ricardo Lara
Insurance Commissioner
California Department of Insurance
Sacramento, California

Dear Commissioner:

Pursuant to your instructions, an examination was made of the

CALIFORNIA INSURANCE COMPANY

(hereinafter also referred to as the Company) at its home office located at 10805 Old Mill Road, Omaha, Nebraska 68154.

SCOPE OF EXAMINATION

We have performed our multi-state examination of the Company. The previous examination of the Company was as of December 31, 2013. This examination covered the period from January 1, 2014 through December 31, 2017.

The examination was conducted in accordance with the National Association of Insurance Commissioners *Financial Condition Examiners Handbook (Handbook)*. The Handbook requires the planning and performance of the examination to evaluate the Company's financial condition, assess corporate governance, identify current and prospective risks, and evaluate system controls and procedures used to mitigate those risks. An examination also includes identifying and evaluating significant risks that could cause an insurer's surplus to be materially misstated, both currently and prospectively.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process. This may include assessing significant estimates made by management and evaluating management's compliance with Statutory Accounting Principles. The examination does not attest to the fair presentation of the financial statements included herein. If, during the course of the examination, an adjustment is identified, the impact of such adjustment will be documented separately following the Company's financial statements.

This examination report includes significant findings of fact and general information about the Company and its financial condition. There may be other items identified during the examination that, due to their nature (e.g., subjective conclusions, proprietary information, etc.), were not included within the examination report but separately communicated to other regulators and/or the Company.

This was a coordinated examination with California as the lead state of the Applied Underwriters, Inc. subgroup of Berkshire Hathaway, Inc. It was conducted concurrently with other insurance entities in the holding company group, including Applied Underwriters Captive Risk Assurance Company, Inc., Continental Indemnity Company, Illinois Insurance Company, Pennsylvania Insurance Company and Texas Insurance Company. The following states participated on the examination: Iowa and Texas.

SUMMARY OF SIGNIFICANT FINDINGS

Stipulated Consent Cease and Desist Order

Pursuant to the Stipulated Consent Cease and Desist Order (Consent Order) adopted by California Insurance Commissioner Dave Jones on September 6, 2016, the Company and Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA) agreed to apply modified Loss Development Factors (LDFs) that were agreed upon by actuaries from the California Department of Insurance (CDI), the Company and AUCRA, to any California policy issued in connection with a Reinsurance Participation Agreement (RPA),

in force as of July 1, 2016. During the examination, the examination team determined that the Company and ACURA did not apply the agreed upon LDFs to some cancelled and/or expired California policies in accordance with the Consent Order. The Company and AUCRA contend that the error was inadvertent.

In response to the above finding, the Company agreed to make the necessary changes to those affected policies, to comply with the Consent Order. However, the Company indicated that changing the LDFs to comply with the Consent Order might have a negative impact to some of its policies, as the Consent Order LDFs can be higher or lower than the Company's LDFs depending on the age bracket of the claim. In order to prevent any adverse impact to policyholders, the Company proposed to immediately use the lower of the Company's LDFs and Consent Order LDFs.

The CDI agreed with the Company's proposal and also recommended that the Company enter into a new agreement with the CDI that stipulates that the lower of the Company's LDFs and the Consent Order LDFs will be applied to active RPAs moving forward.

Additional information regarding the Consent Order can be found under the Company History Section of the Examination Report.

COMPANY HISTORY

On September 6, 2016, California Insurance Commissioner Dave Jones adopted a Stipulated Consent Cease and Desist Order (Consent Order) that found the Reinsurance Participations Agreement (RPA) issued with worker's compensation insurance sold by the Company and Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA) was illegal and void because it was an unfiled and unapproved collateral agreement that was not filed with the California Worker's Compensation Insurance Bureau (WCIRB) and the California Department of Insurance (CDI) in accordance with California Insurance Code Sections 11658 and 11735 and California Code of Regulations, Title 10, Sections 2218 and 2268.

Within the Consent Order, the Company and AUCRA agreed to cease and desist from issuing new RPAs or renewing existing RPAs issued in connection with a California policy until the RPA has been submitted to the WCIRB and the CDI.

The Consent Order also stated the following:

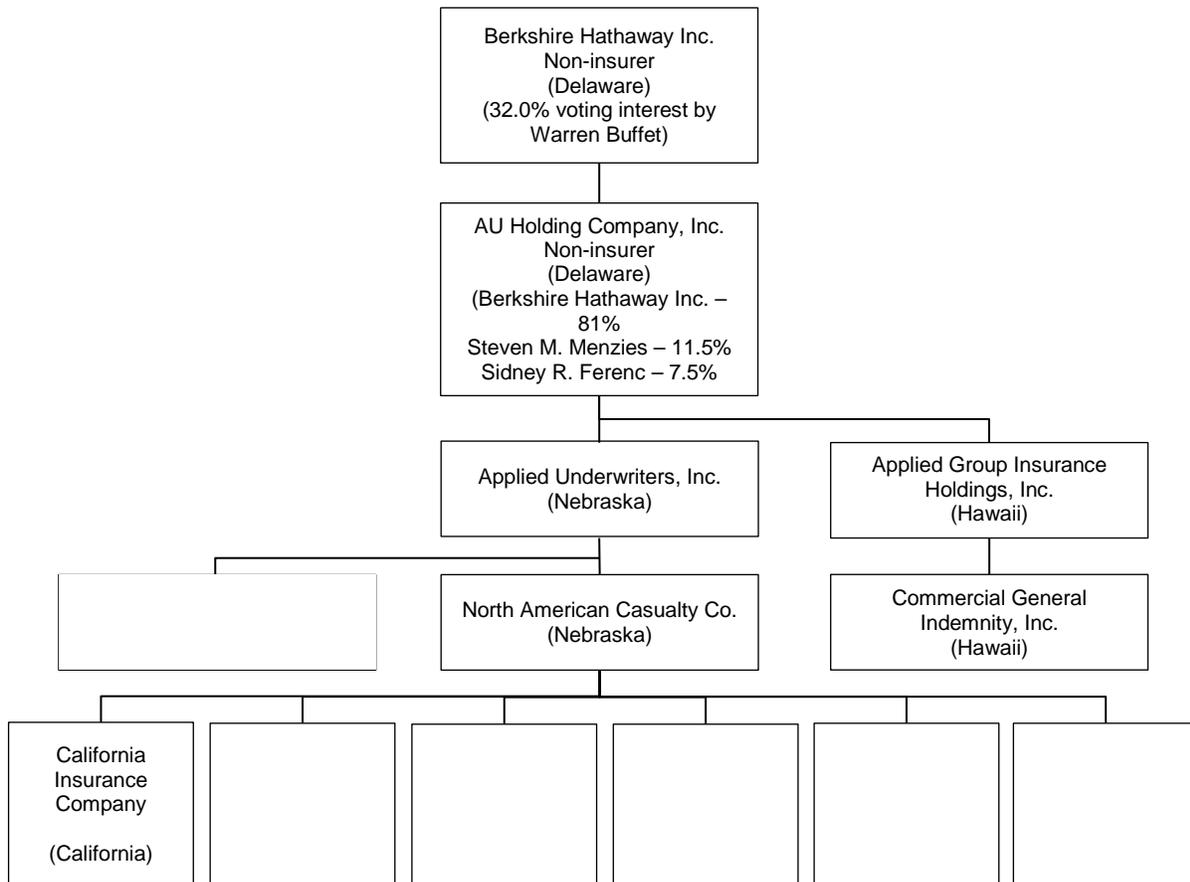
1. The Company may renew a policy issued in connection with an RPA in force as of July 1, 2016;
2. Arbitrations under either an RPA that is currently an in-force RPA or a past RPA entered into or issued in California will take place in California;
3. CIC and AUCRA will not apply run-off loss development factors (LDFs) to any policy at any time, including upon termination, cancellation or nonrenewal of the RPA or insurance policy;
4. The Company and AUCRA will apply modified LDFs that were agreed upon by actuaries from the CDI, the Company and AUCRA to those policies.

The Consent Order only applies to policies and RPAs covering loss exposures in California, claims arising within locations in California and California workers. The Consent Order did not prevent the Company from issuing standalone guaranteed cost policies that have been submitted to the WCIRB and the CDI, and which have not been disapproved.

The Company and AUCRA have since filed an amended RPA with the CDI, which was approved by the Commissioner under a Settlement Agreement between the CDI, the Company and AUCRA on June 7, 2017.

MANAGEMENT AND CONTROL

The Company is a member of the Berkshire Hathaway Inc. insurance holding company system. The following abridged organizational chart is limited to the entities the Company had interrelationships with during the examination period within the holding company system. All ownership is 100% unless otherwise noted:



(*) On July 31, 2014, North American Casualty Co. acquired control of Texas Insurance Company (formerly Optimum Property & Casualty Insurance Company) through the purchase of 100 percent of the issued and outstanding stock for \$4.4 million. The Texas Insurance Department approved this purchase on July 11, 2014.

The five members of the board of directors, who are elected annually, manage the business and affairs of the Company. Following are members of the board and principal officers of the Company serving at December 31, 2017:

Directors

<u>Name and Location</u>	<u>Principal Business Affiliation</u>
Sidney R. Ferenc Highland Beach, Florida	Chairman of the Board Applied Underwriters, Inc.
Jon M. McCright Cedar Rapids, Iowa	Attorney Lynch Dallas, P.C.
Steven M. Menzies Omaha, Nebraska	President and Chief Executive Officer Applied Underwriters, Inc.
Jeffrey A. Silver Omaha, Nebraska	Executive Vice President, Secretary, and General Counsel Applied Underwriters, Inc.
Marc M. Tract Brookville, New York	Attorney Katten, Muchin, Rosenmann LLP

Principal Officers

<u>Name</u>	<u>Title</u>
Sidney R. Ferenc	Chairman of the Board
Steven M. Menzies	President, Chief Executive Officer, and Treasurer
Jeffrey A. Silver	Executive Vice President, Secretary, and General Counsel

Management Agreements

Management Services Agreement: Effective July 26, 2005, the Company entered into a Management Services Agreement (Agreement) with Applied Underwriters, Inc. (AUI). Under the terms of the Agreement, AUI agrees to provide all underwriting, investment,

administrative, actuarial, and claim services to the Company at actual cost. This Agreement was approved by the California Department of Insurance (CDI) on June 25, 2008. Total fees paid by the Company under this Agreement in 2014, 2015, 2016 and 2017 were \$35,518,054, \$37,710,512, \$40,969,153 and \$43,163,965, respectively.

Claim Service Agreement: Effective June 1, 2005, the Company entered into a Claim Service Agreement (Agreement) with Applied Risk Services, Inc. (ARS). Under the terms of the Agreement, ARS agrees to provide all claim-adjusting services to the Company, and the Company agrees to reimburse ARS for all reasonable and necessary expenses incurred in connection with adjusting workers' compensation claims. This Agreement was approved by the CDI on June 25, 2008. Since January 2009, the Company has been paying losses and loss adjustment expenses directly. As a result, the Company did not reimburse ARS for any losses and loss adjustment expenses paid under this Agreement during the examination period.

Agency Agreement: Effective June 1, 2005, the Company entered into an Agency Agreement (Agreement) with ARS. Under the terms of the Agreement, ARS receives premium from policyholders and pays commissions to brokers on behalf of the Company. For this service, the Company reimburses ARS for the actual commissions paid to brokers and agents who write workers' compensation insurance for the Company. The Agreement was approved by the CDI on June 25, 2008. Total commissions reimbursed by the Company under this Agreement in 2014, 2015, 2016 and 2017 were \$30,140,541, \$29,782,735, \$31,262,096 and \$25,015,027, respectively.

Tax Allocation Agreement: Effective May 29, 2006, the Company entered into a Consolidated Federal Income Tax Allocation Agreement (Agreement) with its ultimate parent company, Berkshire Hathaway Inc. The Agreement calls for each company to be responsible for no more than the amount which would be paid as if filing a separate return. The Agreement was approved by the CDI on February 10, 2010.

TERRITORY AND PLAN OF OPERATION

The Company's operations are conducted jointly with its affiliates at its administrative office in Omaha, Nebraska. As of December 31, 2017, the Company was licensed to transact workers' compensation, employment practices liability insurance (other liability claims made), employment practices liability insurance (write-in), and surety and warranty lines of business in the following 26 states:

Alaska	Arizona	California
Indiana	Idaho	Illinois
Hawaii	Connecticut	Georgia
Maryland	Iowa	Kansas
Nevada	Missouri	Montana
North Carolina	New Jersey	New York
Pennsylvania	North Dakota	Oregon
Virginia	Texas	Utah
Washington	Wisconsin	

In 2017, approximately 96.6% of the business written was workers' compensation. Of the \$302.9 million in direct premiums written, approximately 86.4% was written in California, with the remaining 13.6% written in the other 25 licensed states.

The Company predominantly writes workers' compensation in California and employment practices liability coverages for the SolutionOne, CoverStar, EquityComp, JumboGC, and Premier Exclusive products through its affiliated licensed insurance agent, Applied Risk Services, Inc. (ARS). The products are sold through independent brokers with most of the business written in conjunction with payroll services that is administered by another affiliate, Applied Underwriters, Inc. (AUI), under a separate agreement with policyholders.

The Company offers a risk sharing plan, known as a Reinsurance Participation Agreement (RPA), that is available to all non-guaranteed cost workers' compensation

products offered above which provides a profit sharing distribution for policyholders who have good loss experience. Risk sharing components are accounted for through segregated cell accounts and reinsured with the Company's affiliate company, Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA).

SolutionOne is described as an integrated package targeted to small and medium sized businesses that includes: workers' compensation insurance, employment practices liability insurance, payroll processing services, risk management features, and other employer extended coverages in blue-collar industries with annual workers' compensation premiums of \$5,000 to \$400,000. Approximately 39% of the Company's book of business in 2017 was SolutionOne.

In 2017, the Company launched CoverStar, a workers' compensation only product that provides a guaranteed cost policy for insureds with annual premiums of \$5,000 to \$200,000. The Company's target industries are similar to but slightly broader than that of SolutionOne, including more lower-base rate classes. The Company did not write any CoverStar business in 2017.

EquityComp is a specialty workers' compensation product with risk sharing features targeted to medium sized businesses with annual workers' compensation premiums of \$250,000 to \$2,000,000, but does not include payroll processing services. The EquityComp product is sold with a RPA through the Company's affiliate, AUCRA. AUCRA then enters into a RPA with the insured in order to form a segregated protected cell by which the insured shares in a portion of the premiums and losses under the policy. AUCRA acts as a facilitator and also bears risk thereon for premiums and losses between the Company and the insured's protected cell. Approximately 37% of the Company's book of business in 2017 was EquityComp.

In 2016, the Company launched JumboGC, a guaranteed cost workers' compensation product that provides coverage for insureds with annual premiums of \$200,000 to \$2,000,000 and beyond with few capacity and concentration restrictions. The product

targets industries that are similar to those of EquityComp and SolutionOne. Approximately 25% of the Company's book of business in 2017 was JumboGC.

The Premier Exclusive product is a mono-line workers' compensation product offered to employers who do not want to have payroll services but independently provides electronic payroll information monthly to the Company. This product allows appointed agents greater flexibility to service insureds that would otherwise not qualify for SolutionOne. The Company did not write any Premier Exclusive business in 2017.

REINSURANCE

Intercompany

Restated Intercompany Pooling Agreement: On January 1, 2013, the Company entered into a Restated Intercompany Pooling Agreement (Agreement) with affiliates Continental Indemnity Company, Illinois Insurance Company and Pennsylvania Insurance Company. This Agreement was superseded by a Second Restated Intercompany Pooling Agreement, effective January 1, 2015, whereby affiliate Texas Insurance Company was added. The Agreement was approved by the California Department of Insurance (CDI) on January 14, 2015.

The following table illustrates each participant's pooled share as of December 31, 2017:

<u>Company</u>	<u>State of Domicile</u>	<u>Pooling Share</u>
California Insurance Company	CA	70.0%
Continental Indemnity Company	IA	15.0%
Illinois Insurance Company	IA	5.0%
Pennsylvania Insurance Company	IA	5.0%
Texas Insurance Company	TX	<u>5.0%</u>
Pool Total		<u>100.0%</u>

Master Facultative Reinsurance Agreement: Effective July 1, 2005, the Company and Applied Underwriters Captive Risk Assurance Company, Inc. (AUCRA) entered into a Master Facultative Reinsurance Agreement (Agreement) whereby premiums and losses of the profit sharing workers' compensation policies from EquityComp and SolutionOne are ceded to AUCRA under a segregated cell arrangement. The Agreement was approved by the CDI on June 25, 2008.

This Agreement was originally executed as a Quota Share Reinsurance Agreement with AUCRA-BV, AUCRA's former name in the British Virgin Islands. With Addendum 3 executed on August 21, 2007, this Agreement was changed into a Master Facultative Reinsurance Agreement, whereby the Company ceded losses under each segregated cell account above a stated attachment point, up to a maximum as set forth in the participating clients' (policyholders') proposal. With Addendum 5 executed on January 15, 2012, this Agreement changed all references from AUCRA-BV to AUCRA, an Iowa domiciled company.

Assumed

As a member of the National Workers' Compensation Reinsurance Pool, the Company is responsible, on an assumed reinsurance basis, for the actual financial results of the assigned risk policies reinsured through the various pooling mechanisms. The amount of reinsurance assumed from pools and associations was immaterial at December 31, 2017.

Ceded

The following is a summary of the principal ceded reinsurance treaties in-force as of December 31, 2017:

Line of Business and Type of Contract	Reinsurer's Name	Company's Retention	Reinsurer's Limit
Workers' Compensation Quota Share Reinsurance Contract (CoverStar)	<u>Authorized</u> Munich Re America, Arch Re, Everest Re, Cincinnati Insurance, Chubb Re and Odyssey Re <u>Unauthorized</u> None	15.0% up to \$1.0 million, each and every loss occurrence	85.0% up to \$1.0 million, each and every loss occurrence
Terrorism Excess of Loss	<u>Authorized</u> Arch Re, Cincinnati Insurance, Munich Re American, Munich Re Company Odyssey and 14 Lloyd's of London Syndicates. <u>Unauthorized</u> Allied World Assurance, Ascot Bermuda, Endurance Re, Hannover Re (Bermuda), MS Amlin AG and Tokio Millennium Re.	\$100 million, each and every loss occurrence	\$400 million in excess of \$100 million, each and every loss occurrence

FINANCIAL STATEMENTS

The following financial statements are based on the statutory financial statements filed by the Company with the California Department of Insurance and present the financial condition of the Company for the period ending December 31, 2017. The accompanying comments to the amounts reported in the annual statements should be considered an integral part of the financial statements. There were no examination adjustments made to surplus as a result of the examination.

Statement of Financial Condition as of December 31, 2017

Underwriting and Investment Exhibit for the Year Ended December 31, 2017

Reconciliation of Surplus as Regards Policyholders from December 31, 2013 through December 31, 2017

Statement of Financial Condition
as of December 31, 2017

<u>Assets</u>	<u>Ledger and Nonledger Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>	<u>Notes</u>
Bonds	\$ 590,507,290	\$	\$ 590,507,290	
Preferred stocks	105,000		105,000	
Common stocks	128,766,570		128,766,570	
Cash and short-term investments	202,877,432		202,877,432	
Investment income due and accrued	2,420,445		2,420,445	
Premiums, agents' balances and installments booked but deferred and not yet due (including \$1,500 earned but unbilled premiums)	46,031,286	150	46,031,136	
Amount recoverable from reinsurers	20,398,897		20,398,897	
Current federal and foreign income tax recoverable and interest thereon	6,003,445		6,003,445	
Guaranty funds receivable or on deposit	20,728,361		20,728,361	
Receivables from parent, subsidiaries and affiliates	743,786		743,786	
Aggregate write-ins for other than invested assets	<u>2,937,354</u>	<u>127,591</u>	<u>2,809,763</u>	
 Total assets	 <u>\$ 1,021,519,866</u>	 <u>\$ 127,741</u>	 <u>\$ 1,021,392,125</u>	
 <u>Liabilities, Surplus and Other Funds</u>				
Losses			\$ 264,352,308	(1)
Reinsurance payable on paid loss and loss adjustment expenses			16,577,264	
Loss adjustment expenses			50,450,390	(1)
Commissions payable, contingent commissions and other similar charges			4,266,655	
Other expenses			881,957	
Taxes, licenses and fees			1,547,557	
Net deferred tax liability			6,080,340	
Unearned Premiums			3,465,611	
Ceded reinsurance premiums payable			24,641,670	
Funds held by company under reinsurance treaties			22,589,500	
Remittances and items not allocated			6,673	
Payable to parent, subsidiaries and affiliates			2,576,173	
Aggregate write-ins for liabilities			<u>1,358,356</u>	
 Total liabilities			 398,794,454	
Common capital stock	\$ 4,000,000			
Gross paid-in and contributed surplus	54,060,000			
Unassigned funds (surplus)	<u>564,537,671</u>			
Surplus as regards policyholders			<u>622,597,671</u>	
 Total liabilities, surplus and other funds			 <u>\$ 1,021,392,125</u>	

Underwriting and Investment Exhibit
for the Year Ended December 31, 2017

Statement of Income

Underwriting Income

Premiums earned \$ 308,333,542

Deductions:

Losses incurred	\$	123,486,724
Loss adjustment expenses incurred		30,756,153
Other underwriting expenses incurred		<u>67,430,362</u>

Total underwriting deductions 221,673,239

Net underwriting gain 86,660,303

Investment Income

Net investment income earned	\$	9,146,361
Net realized capital gain		<u>32,837,714</u>

Net investment gain 41,984,075

Other Income

Finance and service charges not included in premium	\$	40,371
Aggregate write-ins for miscellaneous income		<u>(318,720)</u>

Total other income (278,349)

Net income after dividends to policyholders, after capital gains tax and before federal and foreign income taxes 128,366,029

Federal and foreign income taxes incurred 31,139,248

Net income \$ 97,226,681

Capital and Surplus Account

Surplus as regards policyholders,
December 31, 2016 \$ 528,664,515

Net income	\$	97,226,681
Change in net unrealized capital gains		10,580,489
Change in net deferred income tax		(14,073,113)
Change in nonadmitted assets		<u>199,099</u>

Change in surplus as regards policyholders for the year 93,933,156

Surplus as regards policyholders,
December 31, 2017 \$ 622,597,671

Reconciliation of Surplus as Regards Policyholders
from December 31, 2013 through December 31, 2017

Surplus as regards policyholders, December 31, 2013			\$ 317,357,442
	<u>Gain in Surplus</u>	<u>Loss in Surplus</u>	
Net income	\$ 306,305,643	\$	
Net unrealized capital gains	16,650,103		
Change in net deferred income tax		17,927,206	
Change in nonadmitted assets	<u>211,689</u>		
Total gains and losses	<u>\$ 323,167,435</u>	<u>\$ 17,927,206</u>	
Net increase in surplus as regards policyholders			<u>305,240,229</u>
Surplus as regards policyholders, December 31, 2017			<u>\$ 622,597,671</u>

COMMENTS ON FINANCIAL STATEMENT ITEMS

(1) Losses and Loss Adjustment Expenses

Based on an analysis by a Senior Casualty Actuary from the California Department of Insurance, the Company's loss and loss adjustment expense reserves as of December 31, 2017 were found to be reasonably stated and have been accepted for the purpose of this examination.

SUBSEQUENT EVENTS

On December 27, 2018, the Company declared a dividend to be paid to its immediate parent, North American Casualty Co., in the amount of \$97.0 million. The dividend amount fell below a threshold that would require prior approval from the California Department of Insurance in accordance with California Insurance Code Section 1215.5(g).

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Current Report of Examination

Summary of Significant Findings - (Page 2): It is recommended that the Company enter into a new agreement with the California Department of Insurance that stipulates that the lower of the Company's LDFs and the Consent Order LDFs will be applied to all California policies issued in connection with a Reinsurance Participation Agreement (RPA), in force as of July 1, 2016. It is also recommended that the Company apply the new set of LDFs to California policies with active RPAs moving forward.

Previous Report of Examination

Accounts and Records - Information Systems Controls - (Page 17): It was recommended that the Company evaluate the recommendations and make appropriate changes to strengthen its information systems controls. The Company indicated that it would continue to make the appropriate changes to strengthen its information systems controls.

ACKNOWLEDGMENT

Acknowledgment is made of the cooperation and assistance extended by the Company's officers and employees during the course of this examination.

Respectfully submitted,

_____/S/_____

Donavan C. Han, CFE
Examiner-In-Charge
Senior Insurance Examiner, Specialist
Department of Insurance
State of California

_____/S/_____

Ber Vang, CFE
Senior Insurance Examiner, Supervisor
Department of Insurance
State of California

Exhibit 5



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

September 13, 2019

VIA ELECTRONIC MAIL ONLY **jeffreysilver@silver-law.net**

Jeffrey A. Silver
California Insurance Company
10805 Old Mill Road
Omaha, Nebraska 68154

SUBJECT: California Insurance Company, a California domestic
("CIC") – Form A

Dear Mr. Silver:

We acknowledge receipt of CIC's application in connection with the sale of CIC to Mr. Menzies that is part of the sale by Berkshire Hathaway's sale of AU Holdings, Inc. ("AUH"), the ultimate holding company owner of CIC. After completing our preliminary review, we request a response to the following concerns/issues with the submission that need further explanation and/or clarification.

California Insurance Code Section ("CICS") 1215(c) and SSAP 25, item #s 3-5 expressly recognize that control can be exercised by means of contract. The service agreements could potentially and significantly influence the management or operating policies of AUH given the current employment capacity of Mr. Menzies, Sidney Ferenc, Robert Stafford, Justin Smith, Todd Brown and yourself are with Applied Underwriters Inc. ("AUI") The application's Exhibit 11 references that these named individuals after the post-acquisition will be AUH employees along with their reporting staff. Will any of these individuals and their respective staff provide any further services to AUI and or any of its service companies? If so, explain in detail the services and compensation to be paid by AUI to AUH for the services provided. As you note in the filing these officers will no longer be officers of AUI. We request that you provide the list of Officers and Directors of AUI post acquisition.

CALIFORNIA DEPARTMENT OF INSURANCE
PROTECT • PREVENT • PRESERVE
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Tel: 415-538-4413 • Fax: 415-904-5896
Laszlo.Komjathy@insurance.ca.gov

Jeffrey A. Silver
September 13, 2019
Page 2

Since the business functions pertaining to accounting, underwriting/premium audit, legal and actuarial are included in the services that are provided per the Management Services Agreement with AUI or the Agreement with Applied Risk Services, Inc. ("ARS"),¹ please explain how these two agreements will operate post-closing without the transferred employees and the impact upon the fees that CIC expects to pay the service providers for the two year term post-acquisition including the expected services to be provided for the next two years. It would also appear that the applicable agreements would have to be amended to remove from the service agreements those functions that are related to the employees transferred to AUH. If you believe the service agreements will not need to be amended, please explain how CIC will remain in compliance with the contract if it does not intend to rely on AUI for those services. Additionally, given Mr. Menzies and your active involvement with the handling of claims and their related litigation, please explain how this will impact the services provided under the Claims Agreement.

Post-acquisition AUH and AUI will continue to share office space. Who is the lessee for the space? How long do you expect AUH to continue sharing space with AUI? Will the office space for AUH and AUI be in separate segregated areas or commingled? How will AUH's operations be impacted by the continuing sharing of office space?

Although Item V(a) of the Form A Information Statement by Mr. Menzies (the "Offeror") stated that he has no "present" plans to liquidate CIC, to sell any of its assets, to merge it with any person(s), to declare a dividend (whether or not extraordinary) or to make any other major change to CIC's business operations, reference is made in V(c) regarding contemplated future acquisitions of UIC insurance subsidiaries. Is there a time frame for these potential transactions in consideration? If so, when. Please provide a list of UIC's subsidiaries under consideration to be acquired by CIC, description of their business, the amount of stockholder's equity and the business reasons for contemplating these acquisitions.

As noted in Footnote 1, CIC is not in compliance with the code by having entered into

- a) Addendum No. 1 to the Management Services Agreement between CIC and AUI dated July 26, 2005;

¹ These two services agreements along with the Claims Agreement have been amended without the applicant filing Form Ds as required pursuant to Insurance Code Section 1215.5(b)(4)

- b) Extension of Addendum No. 9 to the Claims Service Agreement between CIC and ARS dated June 1, 2006;
- c) Addendum No. 1 to the Agency Agreement between CIC and ARS dated June 1, 2005.

A Form D filing needs to be submitted to CDI for the above amendments.

The purchase price for Berkshire Hathaway and Sidney Ferenc's stock in AUH ultimately excludes the value of the insurers that will remain with AUH. Based on current financials, the valuation of AUI appears to be excessive. Did United Insurance Company ("UIC") obtain an independent third-party evaluation related to the purchase price? If you do not know, please inquire of UIC and request that they forward to our attention. This may be done on a confidential basis. Unlike AUH's current ultimate current parent ("UCP"), Berkshire Hathaway, Menzies as the UCP does not appear to have the financial capability to provide financial support to AUH insurers in the event of need and the interest of California's policyholders may be in jeopardy if AUI is unable to generate sufficient fees to remain financially solvent and capable of providing the services required to be provided by AUI to support CIC and its affiliates operations.

During the FED examination, completed in mid-2018, several concerns were assessed (i.e., weak corporate governance and internal control; IT General control findings), However, due to Berkshire's role as UCP, there was a level of comfort regarding these prospective risks. Please review the report and provide explanations as how AUH intends to strengthen internal controls.

In the event AUH elects to terminate the service agreements between CIC and AUI and CIC and ARS after two years to allow CIC to either renew those agreements or seek other available options in the marketplace, provide the underlying reason for terminating the service agreements and elaborate on the available marketplace options.

Who will provide Investment Management Services to CIC post acquisition? Please explain.

Provide a list of transactions/arrangements anticipated to be entered into between any of the AUH Group entities and any of the Quasha Family/Sahara Family entities post acquisition, if any.

1. Regarding Exhibit 25, CIC's Five Year Pro-Forma Financial Statements: a significant discrepancy was noted between CIC's actual results for the second quarter ended June 30, 2019 compared to the 2019 year end projection, which projected more optimistic results compared to actual as follows:

(\$in thousand)	Actual as of 6/30/2019	2019 Actual Annualized	2019 Projection	2019 Actual Annualized and ProjectionVariance
Net Premiums Earned	98,901	197,802	275,986	-28%
Net losses Incurred	51,695	103,390	203,230	-49%
LAE Incurred	16,336	32,672	22,079	48%
Other underwriting expenses	25,983	51,966	21,836	138%
Net underwriting gain (loss)	4,887	9,774	28,841	-66%
Net investment income	9,409	18,818	13,993	34%
Net income before taxes	14,296	28,592	42,941	-33%
Federal income taxes incurred	5,133	10,266	8,995	14%
Net income after taxes	9,163	18,326	33,946	-46%

In addition, the projections show that there will be no dividend payments to stockholders by CIC for the next five (5) years. If CIC is planning to pay dividends during this period, please update the projection to include projected dividend payments.

Please include impact of any major transactions contemplated in the next five years.

Provide the assumptions used in the projections and include detailed amount of projected fees to be paid by CIC to AUI and ARS for the next five years.

2. In the past, CIC has opted not to have catastrophe reinsurance and has relied on the financial strength of its ultimate parent, Berkshire, should a catastrophe occur. Please explain how AUH/CIC plans to address this risk post acquisition.
3. Pursuant to the Assignment Agreement entered into between Mr. Menzies and BAC, Mr. Menzies will receive a significantly large amount of assets (ownership in AUH Insurers – see highlighted item on the second table below, Insurance Companies column) in exchange for his 11.5% interest in AUI (see highlighted item on the second table below, Service Segment column):

GAAP 2018 Combined CPA Report of AU Holding:

	Service Segment	Insurance Companies	Eliminations	Purchase Adjustments	Total
Cash and cash equivalents, held in trust	-	8,890,650	-	-	8,890,650
Cash and cash equivalents	55,222,794	367,464,346	-	-	422,687,140
U.S. Treasury Bills	-	224,329,746	-	-	224,329,746
Total Cash and Invested Assets	55,222,794	600,684,742	0	0	655,907,536
Accounts Receivable	120,873,631	64,033,714	(942)	-	184,906,403
Property and Equipment	87,564,114	0	-	-	87,564,114
Reinsurance Recoverables	-	1,551,663,082	(1,199,850,884)	-	351,812,198
Intangible Assets	196,157,605	6,679,538	(193,907,063)	42,958,000	51,888,080
Other Assets	118,433,084	1,496,453,657	(131,300,000)	(4,056)	1,483,582,685
Total Assets	578,251,228	3,719,514,733	(1,525,058,889)	42,953,944	2,815,661,016
Unpaid losses and loss adjustment expense	-	2,049,899,268	(1,099,433,766)	-	950,465,502
Reinsurance Payable	-	635,453,014	(100,417,118)	-	535,035,896
Accounts Payable	12,733,443	158,762,066	(131,300,942)	-	40,194,567
Loan payable	120,000,000	-	-	-	120,000,000
Other Liabilities	116,706,411	-	-	-	116,706,411
Total Liabilities	249,439,854	2,874,967,663	(1,331,151,826)	-	1,793,255,691
Total Equity	328,811,374	844,547,070	(193,907,063)	42,953,944	1,022,405,325
As of 12/31/2018					
(dollars are estimated)	Service Segment	Insurance Companies	Total AUH Equity		
Mr. Menzies (11.5%)	37,813,308	74,823,601	117,576,612		
Berkshire (81%)	266,337,213	527,018,406	828,148,313		
Mr. Ferenc (7.5%)	24,660,853	48,798,001	76,680,399		
Total AUH Equity	328,811,374	650,640,007	1,022,405,325		

- a) Please provide journal entries regarding the assignment by BAC to Mr. Menzies of all of the outstanding capital stock of AUH insurers in exchange for the transfer of Menzies' shares in AUI.
- b) Please provide pro-forma financial statement of Mr. Menzies using the format below. Please add additional accounts as needed to clearly illustrate the adjustments and Mr. Menzies' post acquisition financial statement:

Description (In US \$, 000s omitted)	Actual as of 12/31/2018	BAC Assignment to Menzies-Pro-forma adjustments	Post- Acquisition	Detailed explanation regarding pro- forma adjustments
Cash and cash equivalents	250			
Investments in AUH	225,000			
Investments in Constitution Group, LLC/Constitution Insurance Company	39,927			
Investments in Simmon Agency, LLC	4,046			
Retirement Accounts	840			
Real Estate	13,809			
Other Personal Property	225			
Appraised Collectibles	4,398			
Other	-			
Total Assets	288,495			
Total Liabilities	100			
Net Worth	288,395			

c) The estimated total consideration to be paid by UIC/BAC for the Berkshire SPA (\$737.0 million) and Ferenc SPA (\$54.9 million-\$67.5 million) is approximately \$791.9 million-\$804.5 million. This includes shares of AUH, which, as shown on AU Holding's 2018 GAAP CPA Report comprise the majority of AU Holding's total equity. In Mr. Quasha's previously submitted September 30, 2019 pro-forma balance sheet for BAC, AUI was reported as an asset with a value \$804.5 million even after BAC's assignment or transfer of ownership in AUH to Mr. Menzies in consideration for his 11.5% interest in AUI.

- i. BAC's journal entries as of September 30, 2019 did not include entries (debits and credits) pertaining to the assignment transaction between BAC and Mr. Menzies. Please provide the journal entries.
- ii. BAC's Pro Forma Balance Sheet as of September 30, 2019 reported equity interests in AUI for \$804.5 million. Please provide detailed pro-forma financial statements of AUI reflecting the adjustments as a result of the assignment agreement between BAC and Mr. Menzies in the following format:

AUI

(In US \$) Description	Actual as of 12/31/2018	BAC Assignment to Menzies-Pro-forma adjustments	Post- Acquisition	Detailed Explanation regarding Pro-forma adjustments
Total Cash and Invested Assets	55,222,794			
Accounts Receivable	120,873,631			
Property and Equipment	87,564,114			
Intangible Assets	196,157,605			
Other Assets	118,433,084			
Total Assets	578,251,228			
Accounts Payable	12,733,443			
Loan payable	120,000,000			
Other Liabilities	116,706,411			
Total Liabilities	249,439,854			
Total Equity	328,811,374			

4. Provide a copy of AU Holding Company, Inc. and Subsidiaries' Consolidated GAAP CPA Reports for 2015, 2016, and 2017.
5. In 2017 and 2018, AUI reported total revenue of \$66.8 million and \$71.2 million, respectively. Please list the sources of these revenue and description of service provided by AUI (i.e., management services, payroll processing, etc.):

Name of Service Recipient (Year 2018)	Amount	Description
California Insurance Co.	\$	
Total Revenue	\$	

Name of Service Recipient (Year 2018)	Amount	Description
California Insurance Co.	\$	
Total Revenue	\$	

Also, provide similar information for years 2014, 2015, and 2017.

6. Exhibit 22, AUI's Projected Income Statement from 2019-2023:

- a) This projection shows that AUI's will have total revenue of \$108.0 million in 2019, \$142.1 million in 2020, \$163.8 million in 2021, \$178.0 million in 2022, and \$186.1 million in 2023. Provide a detailed explanation for the significant increase in projected revenue from 2019 through 2023 compared to prior years.
- b) Please provide a list of the sources of these revenue and description of service(s) provided in similar format as item 9 above.
- c) Provide detailed information regarding dividend income of \$136.5 million and gain on sale of PP&E of \$120.0 million. Who will provide the dividend income of \$136.5 million to AUI and when will AUI receive this amount? Who owns PP&E and why is AUI reporting a gain on the sale of this entity?
- d) Provide the assumptions used in preparing this projection.

7. The Form A Information Statement, Item V(e)(i)(b), page 10 stated that "Under no circumstances will UIC/BAC have more than \$425 million in bank debt to be serviced by AUI". However, according to the Sources and Uses Table and the Citibank N.A. term sheet previously submitted by Mr. Quasha, it appears that payment of the other \$300 million financing from Citibank N.A. will come from excess cash in Service Companies, which is AUI.

- a) Please provide a table showing the estimated monthly payments for the \$300 million loan, including interest and principal, if applicable.
- b) Please provide a table showing the estimated monthly payments for the \$425 million loan, including interest and principal, if applicable.

8. Exhibit 23, Litigation Cover: Pursuant to the Form A, CIC has obtained a litigation cover through Vale Insurance Partners (a member of the Quasha Group) for judgments against CIC with total limit of liability of \$100 million, in the aggregate. Please provide the following:

- a) Provide the number of legal cases currently pending against AUI, CIC, and AUCRA.

Jeffrey A. Silver
September 13, 2019
Page 9

- b) Provide the estimated amount of total exposure by AUI, CIC, and AUCRA relating to the lawsuits (loss from adverse judgment and claims). Please provide the probable maximum loss from adverse judgment of the lawsuits.
 - c) Please explain why the term of this litigation cover is seven (7) years.
 - d) Is there a litigation cover for AUCRA? Please explain.
9. Pursuant to the Form A, UIC/BAC made an offer of \$54.9 million for the Ferenc shares and an independent valuation process is being undertaken by KPMG to determine valuation, which is expected to be completed prior to September 30, 2019. Please submit this information when available.
10. To date, we only received the 2017 Audited Financial Statements of UIC. We are still waiting for a copy of UIC's 2018 Audited Financial Statements including management's assessment of internal controls. Please submit this information.
11. To date, we only received the 2016 and 2018 Combined Statement of Financial Condition for Wayne Quasha and the Everest Trust. However, the financial statements for the other UCP, Mr. Reid Taradash, as Trustee of the Townsend Family Trust, were not provided. Please submit this information.

We may have additional questions during our review process of this Form A and will let you know.

Cordially,



Laszlo Komjathy, Jr.
Attorney IV

cc: Jing Yi Chen
Bernadette Sia
Michelle Lo
Carol Frair

Exhibit 6



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

September 27, 2019

VIA ELECTRONIC MAIL ONLY **jeffreysilver@silver-law.net**

Jeffrey A. Silver
California Insurance Company
10805 Old Mill Road
Omaha, Nebraska 68154

SUBJECT: California Insurance Company, a California domestic ("CIC") –
Form A

Dear Mr. Silver:

Numerous questions still exist concerning the pending litigation, the potential liability and financial impact that it will have upon the insurer. Although arrangements have been made for certain amount of litigation coverage, due to the limited information currently available regarding the pending litigation, their current early status and potential impact on the insurer, and given the time constraints placed by Berkshire Hathaway for completing the sale, the Department cannot satisfactorily complete its review of the application to determine whether or not the proposed sale might jeopardize the financial stability of the insurer or prejudice the interests of its policyholders. Consequently, we can neither approve nor disapprove the pending application prior to September 30, 2019.

Cordially,

A handwritten signature in blue ink, appearing to read "L. Komjathy".

Laszlo Komjathy, Jr.
Attorney IV

cc: Jing Yi Chen
Bernadette Sia
Michelle Lo
Carol Frair

#1133968.1

CALIFORNIA DEPARTMENT OF INSURANCE
PROTECT • PREVENT • PRESERVE
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Tel: 415-538-4413 • Fax: 415-904-5896
Laszlo.Komjathy@insurance.ca.gov

Exhibit 7



PROPERTY AND CASUALTY COMPANIES—ASSOCIATION EDITION

QUARTERLY STATEMENT

AS OF JUNE 30, 2020
OF THE CONDITION AND AFFAIRS OF THE

Continental Indemnity Company

NAIC Group Code	04962	04962	NAIC Company Code	28258	Employer's ID Number	31-1191023
	(Current Period)	(Prior Period)				
Organized under the Laws of	New Mexico		State of Domicile or Port of Entry	New Mexico		
Country of Domicile	United States					
Incorporated/Organized	12/09/1986		Commenced Business	12/29/1986		
Statutory Home Office	308 Catron Street		Santa Fe, NM, US 87501			
	(Street and Number)		(City or Town, State, Country and Zip Code)			
Main Administrative Office	10805 Old Mill Road		Omaha, NE, US 68154-2607		402-827-3424	
	(Street and Number)		(City or Town, State, Country and Zip Code)		(Area Code) (Telephone Number)	
Mail Address	P.O. Box 3646		Omaha, NE, US 68103-0646			
	(Street and Number or P.O. Box)		(City or Town, State, Country and Zip Code)			
Primary Location of Books and Records	10805 Old Mill Road		Omaha, NE, US 68154-2607		402-827-3424	
	(Street and Number)		(City or Town, State, Country and Zip Code)		(Area Code) (Telephone Number)	
Internet Web Site Address	www.auw.com					
Statutory Statement Contact	Robert L. Stafford		402-827-3424-4094			
	(Name)		(Area Code) (Telephone Number) (Extension)			
	rstafford@auw.com		402-827-3432			
	(E-Mail Address)		(Fax Number)			

OFFICERS

Name	Title	Name	Title
Steven M. Menzies	President/Chief Executive Officer	Steven M. Menzies	Treasurer
Jeffrey A. Silver	Secretary		

OTHER OFFICERS

Justin N. Smith	Vice President	Robert L. Stafford	Vice President
-----------------	----------------	--------------------	----------------

DIRECTORS OR TRUSTEES

Jon M. McCright	Steven M. Menzies	Jeffrey A. Silver	Robert L. Stafford
Marc M. Tract			

State ofNebraska.....

County ofDouglas.....ss

The officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims thereon, except as herein stated, and that this statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended, and have been completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures manual except to the extent that: (1) state law may differ; or, (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively. Furthermore, the scope of this attestation by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy (except for formatting differences due to electronic filing) of the enclosed statement. The electronic filing may be requested by various regulators in lieu of or in addition to the enclosed statement.

Steven M. Menzies
President/Chief Executive Officer

Steven M. Menzies
Treasurer

Jeffrey A. Silver
Secretary

a. Is this an original filing? Yes [X] No []

Subscribed and sworn to before me this
11th day of August, 2020

b. If no:
1. State the amendment number _____
2. Date filed _____
3. Number of pages attached _____

Patricia V. Ahern, Insurance Accounting Supervisor
08/26/2023

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

ASSETS

	Current Statement Date			4 December 31 Prior Year Net Admitted Assets
	1 Assets	2 Nonadmitted Assets	3 Net Admitted Assets (Cols. 1 - 2)	
1. Bonds	77,984,881		77,984,881	86,210,245
2. Stocks:				
2.1 Preferred stocks			0	0
2.2 Common stocks	9,920,041		9,920,041	9,920,041
3. Mortgage loans on real estate:				
3.1 First liens			0	0
3.2 Other than first liens			0	0
4. Real estate:				
4.1 Properties occupied by the company (less \$ encumbrances)			0	0
4.2 Properties held for the production of income (less \$ encumbrances)			0	0
4.3 Properties held for sale (less \$ encumbrances)			0	0
5. Cash (\$29,323,128), cash equivalents (\$157,454) and short-term investments (\$9,688,910)	39,169,492		39,169,492	23,247,995
6. Contract loans (including \$ premium notes)			0	0
7. Derivatives	0		0	0
8. Other invested assets	64,962,143		64,962,143	62,993,267
9. Receivables for securities			0	11,735,579
10. Securities lending reinvested collateral assets			0	0
11. Aggregate write-ins for invested assets	0	0	0	0
12. Subtotals, cash and invested assets (Lines 1 to 11)	192,036,557	0	192,036,557	194,107,127
13. Title plants less \$ charged off (for Title insurers only)			0	0
14. Investment income due and accrued	984,879		984,879	439,670
15. Premiums and considerations:				
15.1 Uncollected premiums and agents' balances in the course of collection	2,446,156		2,446,156	3,472,193
15.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due (including \$413,053 earned but unbilled premiums)	10,444,391	41,305	10,403,086	15,485,726
15.3 Accrued retrospective premiums (\$) and contracts subject to redetermination (\$)			0	0
16. Reinsurance:				
16.1 Amounts recoverable from reinsurers	12,451,462		12,451,462	10,330,598
16.2 Funds held by or deposited with reinsured companies	375,400		375,400	320,400
16.3 Other amounts receivable under reinsurance contracts			0	0
17. Amounts receivable relating to uninsured plans			0	0
18.1 Current federal and foreign income tax recoverable and interest thereon			0	0
18.2 Net deferred tax asset	2,554,465	751,051	1,803,414	1,712,568
19. Guaranty funds receivable or on deposit	391,660		391,660	386,931
20. Electronic data processing equipment and software			0	0
21. Furniture and equipment, including health care delivery assets (\$)			0	0
22. Net adjustment in assets and liabilities due to foreign exchange rates			0	0
23. Receivables from parent, subsidiaries and affiliates			0	25
24. Health care (\$) and other amounts receivable			0	0
25. Aggregate write-ins for other-than-invested assets	1,806,800	27,207	1,779,593	8,243,202
26. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 12 to 25)	223,491,770	819,563	222,672,207	234,498,440
27. From Separate Accounts, Segregated Accounts and Protected Cell Accounts			0	0
28. Total (Lines 26 and 27)	223,491,770	819,563	222,672,207	234,498,440
DETAILS OF WRITE-INS				
1101.			0	0
1102.			0	0
1103.			0	0
1198. Summary of remaining write-ins for Line 11 from overflow page	0	0	0	0
1199. Totals (Lines 1101 through 1103 plus 1198) (Line 11 above)	0	0	0	0
2501. Policyholder surcharges	698,419		698,419	1,014,918
2502. Prepaid expenses	27,207	27,207	0	0
2503. NE sales taxes paid	1,820		1,820	1,567
2598. Summary of remaining write-ins for Line 25 from overflow page	1,079,354	0	1,079,354	7,226,717
2599. Totals (Lines 2501 through 2503 plus 2598) (Line 25 above)	1,806,800	27,207	1,779,593	8,243,202

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

LIABILITIES, SURPLUS AND OTHER FUNDS

	1 Current Statement Date	2 December 31, Prior Year
1. Losses (current accident year \$ 8,050,421)	78,247,056	77,278,824
2. Reinsurance payable on paid losses and loss adjustment expenses	4,495,317	2,796,180
3. Loss adjustment expenses	13,751,726	13,482,143
4. Commissions payable, contingent commissions and other similar charges	(360,784)	4,029,946
5. Other expenses (excluding taxes, licenses and fees)	68,804	740,287
6. Taxes, licenses and fees (excluding federal and foreign income taxes)	7,662,972	8,368,991
7.1 Current federal and foreign income taxes (including \$ on realized capital gains (losses))	4,884,196	4,671,985
7.2 Net deferred tax liability		0
8. Borrowed money \$ and interest thereon \$		0
9. Unearned premiums (after deducting unearned premiums for ceded reinsurance of \$ 23,162,313 and including warranty reserves of \$ 6,675 and accrued accident and health experience rating refunds including \$ for medical loss ratio rebate per the Public Health Service Act)	3,742,933	4,465,817
10. Advance premium		0
11. Dividends declared and unpaid:		
11.1 Stockholders		0
11.2 Policyholders		0
12. Ceded reinsurance premiums payable (net of ceding commissions)	6,557,663	7,853,622
13. Funds held by company under reinsurance treaties		0
14. Amounts withheld or retained by company for account of others		0
15. Remittances and items not allocated	898,618	137,536
16. Provision for reinsurance (including \$ certified)		0
17. Net adjustments in assets and liabilities due to foreign exchange rates		0
18. Drafts outstanding		0
19. Payable to parent, subsidiaries and affiliates	580,644	502,151
20. Derivatives	0	0
21. Payable for securities		7,750,000
22. Payable for securities lending		0
23. Liability for amounts held under uninsured plans		0
24. Capital notes \$ and interest thereon \$		0
25. Aggregate write-ins for liabilities	(7,839,783)	(7,727,725)
26. Total liabilities excluding protected cell liabilities (Lines 1 through 25)	112,689,362	124,349,757
27. Protected cell liabilities		0
28. Total liabilities (Lines 26 and 27)	112,689,362	124,349,757
29. Aggregate write-ins for special surplus funds	(642,594)	0
30. Common capital stock	4,000,002	4,000,002
31. Preferred capital stock		0
32. Aggregate write-ins for other than special surplus funds	0	0
33. Surplus notes		0
34. Gross paid in and contributed surplus	33,656,763	33,656,763
35. Unassigned funds (surplus)	72,968,674	72,491,918
36. Less treasury stock, at cost:		
36.1 shares common (value included in Line 30 \$)		0
36.2 shares preferred (value included in Line 31 \$)		0
37. Surplus as regards policyholders (Lines 29 to 35, less 36)	109,982,845	110,148,683
38. Totals (Page 2, Line 28, Col. 3)	222,672,207	234,498,440
DETAILS OF WRITE-INS		
2501. Funds held by company under reinsurance assumed contracts	414,130	414,130
2502. Escheat payable	599,392	589,958
2503. Retroactive reinsurance ceded	(8,857,406)	(8,759,597)
2598. Summary of remaining write-ins for Line 25 from overflow page	4,101	27,784
2599. Totals (Lines 2501 through 2503 plus 2598) (Line 25 above)	(7,839,783)	(7,727,725)
2901. Special surplus from retroactive reinsurance ceded	(642,594)	0
2902.		0
2903.		0
2998. Summary of remaining write-ins for Line 29 from overflow page	0	0
2999. Totals (Lines 2901 through 2903 plus 2998) (Line 29 above)	(642,594)	0
3201.		0
3202.		0
3203.		0
3298. Summary of remaining write-ins for Line 32 from overflow page	0	0
3299. Totals (Lines 3201 through 3203 plus 3298) (Line 32 above)	0	0

STATEMENT OF INCOME

	1 Current Year to Date	2 Prior Year to Date	3 Prior Year Ended December 31
UNDERWRITING INCOME			
1. Premiums earned:			
1.1 Direct (written \$ 50,971,539)	50,971,539	67,956,410	133,396,757
1.2 Assumed (written \$ 37,122,152)	38,719,956	43,245,788	113,068,518
1.3 Ceded (written \$ 71,868,466)	72,743,386	70,257,968	196,719,816
1.4 Net (written \$ 16,225,225)	16,948,109	40,944,230	49,745,459
DEDUCTIONS:			
2. Losses incurred (current accident year \$ 8,696,413):			
2.1 Direct	34,819,562	24,534,406	59,569,928
2.2 Assumed	29,094,894	24,511,881	54,645,268
2.3 Ceded	53,800,917	25,800,866	92,426,604
2.4 Net	10,113,539	23,245,421	21,788,592
3. Loss adjustment expenses incurred	4,154,624	6,126,453	7,933,275
4. Other underwriting expenses incurred	4,671,395	19,001,723	16,020,325
5. Aggregate write-ins for underwriting deductions	0	0	0
6. Total underwriting deductions (Lines 2 through 5)	18,939,558	48,373,597	45,742,192
7. Net income of protected cells	0	0	0
8. Net underwriting gain (loss) (Line 1 minus Line 6 + Line 7)	(1,991,449)	(7,429,367)	4,003,267
INVESTMENT INCOME			
9. Net investment income earned	1,971,281	1,974,862	3,892,807
10. Net realized capital gains (losses) less capital gains tax of \$	0	0	8,695,401
11. Net investment gain (loss) (Lines 9 + 10)	1,971,281	1,974,862	12,588,208
OTHER INCOME			
12. Net gain or (loss) from agents' or premium balances charged off (amount recovered \$ amount charged off \$)	0	0	0
13. Finance and service charges not included in premiums	0	0	0
14. Aggregate write-ins for miscellaneous income	107,910	(1,264,030)	(740,367)
15. Total other income (Lines 12 through 14)	107,910	(1,264,030)	(740,367)
16. Net income before dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes (Lines 8 + 11 + 15)	87,742	(6,718,535)	15,851,108
17. Dividends to policyholders	0	0	0
18. Net income, after dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes (Line 16 minus Line 17)	87,742	(6,718,535)	15,851,108
19. Federal and foreign income taxes incurred	212,211	(314,810)	2,000,475
20. Net income (Line 18 minus Line 19)(to Line 22)	(124,469)	(6,403,725)	13,850,633
CAPITAL AND SURPLUS ACCOUNT			
21. Surplus as regards policyholders, December 31 prior year	110,148,683	99,200,406	99,200,406
22. Net income (from Line 20)	(124,469)	(6,403,725)	13,850,633
23. Net transfers (to) from Protected Cell accounts	0	0	0
24. Change in net unrealized capital gains or (losses) less capital gains tax of \$	(128,893)	3,281,613	(2,871,991)
25. Change in net unrealized foreign exchange capital gain (loss)	0	0	0
26. Change in net deferred income tax	162,329	1,161,827	596,235
27. Change in nonadmitted assets	(74,805)	15,584	(626,600)
28. Change in provision for reinsurance	0	0	0
29. Change in surplus notes	0	0	0
30. Surplus (contributed to) withdrawn from protected cells	0	0	0
31. Cumulative effect of changes in accounting principles	0	0	0
32. Capital changes:			
32.1 Paid in	0	0	0
32.2 Transferred from surplus (Stock Dividend)	0	0	0
32.3 Transferred to surplus	0	0	0
33. Surplus adjustments:			
33.1 Paid in	0	0	0
33.2 Transferred to capital (Stock Dividend)	0	0	0
33.3 Transferred from capital	0	0	0
34. Net remittances from or (to) Home Office	0	0	0
35. Dividends to stockholders	0	0	0
36. Change in treasury stock	0	0	0
37. Aggregate write-ins for gains and losses in surplus	0	0	0
38. Change in surplus as regards policyholders (Lines 22 through 37)	(165,838)	(1,944,701)	10,948,277
39. Surplus as regards policyholders, as of statement date (Lines 21 plus 38)	109,982,845	97,255,705	110,148,683
DETAILS OF WRITE-INS			
0501.	0	0	0
0502.	0	0	0
0503.	0	0	0
0598. Summary of remaining write-ins for Line 5 from overflow page	0	0	0
0599. TOTALS (Lines 0501 through 0503 plus 0598) (Line 5 above)	0	0	0
1401. Miscellaneous income	102	35	36
1402. Retroactive reinsurance gain (loss)	107,808	(1,264,065)	(740,403)
1403.	0	0	0
1498. Summary of remaining write-ins for Line 14 from overflow page	0	0	0
1499. TOTALS (Lines 1401 through 1403 plus 1498) (Line 14 above)	107,910	(1,264,030)	(740,367)
3701.	0	0	0
3702.	0	0	0
3703.	0	0	0
3798. Summary of remaining write-ins for Line 37 from overflow page	0	0	0
3799. TOTALS (Lines 3701 through 3703 plus 3798) (Line 37 above)	0	0	0

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

CASH FLOW

	1 Current Year To Date	2 Prior Year To Date	3 Prior Year Ended December 31
Cash from Operations			
1. Premiums collected net of reinsurance.....	21,060,943	61,676,407	32,107,202
2. Net investment income	1,427,164	2,186,611	4,302,230
3. Miscellaneous income	52,910	(1,273,480)	(873,267)
4. Total (Lines 1 to 3)	22,541,017	62,589,538	35,536,165
5. Benefit and loss related payments	9,659,276	10,998,206	21,365,188
6. Net transfers to Separate Accounts, Segregated Accounts and Protected Cell Accounts.....	0	0	0
7. Commissions, expenses paid and aggregate write-ins for deductions	14,236,123	23,418,585	27,611,284
8. Dividends paid to policyholders	0	0	0
9. Federal and foreign income taxes paid (recovered) net of \$ tax on capital gains (losses).....	0	0	157,649
10. Total (Lines 5 through 9)	23,895,399	34,416,791	49,134,121
11. Net cash from operations (Line 4 minus Line 10)	(1,354,382)	28,172,747	(13,597,956)
Cash from Investments			
12. Proceeds from investments sold, matured or repaid:			
12.1 Bonds	19,321,417	14,520,000	56,662,403
12.2 Stocks	0	0	25,598,055
12.3 Mortgage loans	0	0	0
12.4 Real estate	0	0	0
12.5 Other invested assets	8,728,107	0	0
12.6 Net gains or (losses) on cash, cash equivalents and short-term investments	0	0	24,414
12.7 Miscellaneous proceeds	3,985,579	0	0
12.8 Total investment proceeds (Lines 12.1 to 12.7)	32,035,103	14,520,000	82,284,872
13. Cost of investments acquired (long-term only):			
13.1 Bonds	11,098,177	15,905,069	40,302,310
13.2 Stocks	0	0	9,920,041
13.3 Mortgage loans	0	0	0
13.4 Real estate	0	0	0
13.5 Other invested assets	10,825,876	0	69,097,481
13.6 Miscellaneous applications	0	0	3,985,579
13.7 Total investments acquired (Lines 13.1 to 13.6)	21,924,053	15,905,069	123,305,411
14. Net increase (or decrease) in contract loans and premium notes	0	0	0
15. Net cash from investments (Line 12.8 minus Line 13.7 and Line 14)	10,111,050	(1,385,069)	(41,020,539)
Cash from Financing and Miscellaneous Sources			
16. Cash provided (applied):			
16.1 Surplus notes, capital notes	0	0	0
16.2 Capital and paid in surplus, less treasury stock.....	0	0	0
16.3 Borrowed funds	0	0	0
16.4 Net deposits on deposit-type contracts and other insurance liabilities	0	0	0
16.5 Dividends to stockholders	0	0	13,500,000
16.6 Other cash provided (applied).....	7,164,829	(8,772,706)	(8,644,922)
17. Net cash from financing and miscellaneous sources (Line 16.1 through Line 16.4 minus Line 16.5 plus Line 16.6).....	7,164,829	(8,772,706)	(22,144,922)
RECONCILIATION OF CASH, CASH EQUIVALENTS AND SHORT-TERM INVESTMENTS			
18. Net change in cash, cash equivalents and short-term investments (Line 11, plus Lines 15 and 17)	15,921,497	18,014,972	(76,763,417)
19. Cash, cash equivalents and short-term investments:			
19.1 Beginning of year.....	23,247,995	100,011,412	100,011,412
19.2 End of period (Line 18 plus Line 19.1)	39,169,492	118,026,384	23,247,995

Notes to the Financial Statements

1. Summary of Significant Accounting Policies and Going Concern

A. Accounting Practices

The accompanying financial statements of Continental Indemnity Company ("the Company") have been prepared in conformity with accounting practices prescribed or permitted by the New Mexico Office of Superintendent of Insurance ("NM OSI") and the National Association of Insurance Commissioners ("NAIC").

NM OSI requires its domiciled insurance companies to prepare their statutory financial statements in accordance with the NAIC *Statement of Statutory Accounting Principles* ("SSAP"), subject to any deviations prescribed or permitted by the NM OSI – no such deviations exist in the accompanying financial statements.

	SSAP #	F/S Page	F/S Line #	06/30/2020	12/31/2019
Net Income					
(1) State basis (Page 4, Line 20, Columns 1 & 3)	XXX	XXX	XXX	\$ (124,469)	\$ 13,850,633
(2) State prescribed practices that are an increase / (decrease) from NAIC SAP:					
(3) State permitted practices that are an increase / (decrease) from NAIC SAP:					
(4) NAIC SAP (1-2-3=4)	XXX	XXX	XXX	<u>\$ (124,469)</u>	<u>\$ 13,850,633</u>
Surplus					
(5) State basis (Page 3, Line 37, Columns 1 & 2)	XXX	XXX	XXX	\$ 109,982,845	\$ 110,148,683
(6) State prescribed practices that are an increase / (decrease) from NAIC SAP:					
(7) State permitted practices that are an increase / (decrease) from NAIC SAP:					
(8) NAIC SAP (5-6-7=8)	XXX	XXX	XXX	<u>\$ 109,982,845</u>	<u>\$ 110,148,683</u>

B. Use of Estimates in the Preparation of the Financial Statements

The preparation of financial statements requires management to make estimates and assumptions that affect the amounts reported in these financial statements and notes. Actual results could differ from those estimates.

C. Accounting Policy

Direct, assumed, and ceded workers' compensation premiums are written and earned as collected per the installment method in accordance with *SSAP, No. 53 – Property-Casualty Contracts – Premiums*, of the *Accounting Practices and Procedures Manual*. Unearned premium reserves have only been established for the workers' compensation line with regard to assumed residual markets mandatory pooling. For Federal Tax purposes the installment method of recording premium is not recognized. As a result, unearned premium has been calculated as if the pro-rata method has been used, and has been recorded as a temporary item within deferred tax assets.

Assumed employment practices legal insurance and warranty premiums, pursuant an intercompany pooling agreement (see Note 26), are earned over the term and life of the related policies. Assumed commercial multiple peril and assumed commercial and private passenger auto insurance premiums are earned over the term and life of the related policies. Unearned premium reserves are established to cover the unexpired portion of premiums written on these policies.

The Company's participation in involuntary risk pools ("residual markets") is mandatory and generally a function of its proportionate share of the voluntary market, by line of insurance, in each state in which it does business. The Company's participation in mandatory residual markets requires it to record premiums, losses and expenses in the same manner as it would record similar, voluntary business that is written by the Company. In addition to its proportional share of losses and expenses incurred by the residual market facility, the Company is responsible for its share of any otherwise unrecoverable obligations of other residual market participants.

Expenses incurred in connection with acquiring new insurance business, including acquisition costs as sales commissions, are charged to operations as incurred. Expenses incurred are reduced for ceding allowances as received or receivable.

Net investment income earned consists primarily of interest less investment related expense. Interest is recognized on an accrual basis. Net realized capital gains (losses) are recognized using the specific identification method when securities are sold, redeemed or otherwise disposed.

In addition, the Company uses the following accounting policies:

(1) Short-term investments

Short-term investments are stated at amortized cost.

(2) Bonds

Investment grade bonds not backed by other loans are stated at amortized cost using the scientific method. Non-investment grade bonds not backed by other loans are stated at the lower of fair value or amortized cost.

(3) Common Stocks

Common stocks are stated at fair value which approximates cost.

(4) Preferred stocks - Not Applicable

(5) Mortgage loans - Not Applicable

(6) Loan-backed securities

U.S. government agency mortgage-backed securities are stated at amortized cost.

(7) Investments in subsidiaries, controlled and affiliated entities - Not Applicable

(8) Investments in joint ventures, partnerships and limited liability companies

Investments in limited liability companies are valued using the audited U.S. GAAP equity method. Loans are stated at their unpaid principal balances.

Notes to the Financial Statements

1. Summary of Significant Accounting Policies and Going Concern (Continued)

(9) Derivatives - Not Applicable

(10) Investment income as a factor in the premium deficiency calculation - Not Applicable

(11) Loss and Loss Adjustment Expense

The liabilities for estimated losses and loss adjustment expenses (LAE) represent the estimated liabilities for reported claims plus those incurred but not yet reported and the related estimated claim expenses. The liabilities for estimated losses and LAE are determined using case-basis evaluations and statistical analyses and represent estimates of the ultimate net cost of all claims incurred through December 31 of each year. Although considerable variability is inherent in such estimates, management believes that the liability for estimated losses and LAE is adequate. The estimates are continually reviewed and adjusted as necessary. These adjustments are included in current operations and are accounted for as changes in estimates.

The Company has minimal exposure related to pollution, asbestos and mass tort claims, as discussed in Note 33. Factors considered in determining exposure related to these claims primarily include court decisions, legal expenses, plaintiff attorney behavior, specific policy provisions, allocation of liability among insurers and insureds, and other factors such as missing policies and proof of coverage. The Company reviews each individual claim to estimate the amounts necessary, if any, to satisfy the Company's obligations under the applicable insurance policy. For unknown claims, the Company uses information from known claims as well as external sources to estimate the reserve for claims that have been incurred but not reported, as of the reporting date. These claims are fully reinsured and therefore the company has zero net liability on these claims.

(12) Changes in capitalization policy - Not Applicable

(13) Pharmaceutical rebate receivables - Not Applicable

D. Going Concern - Not Applicable

2. Accounting Changes and Corrections of Errors - Not Applicable

3. Business Combinations and Goodwill - Not Applicable

4. Discontinued Operations - Not Applicable

5. Investments

A. Mortgage Loans, including Mezzanine Real Estate Loans - Not Applicable

B. Debt Restructuring - Not Applicable

C. Reverse Mortgages - Not Applicable

D. Loan-Backed Securities

(1) Assumption regarding prepayments on loan-backed securities were determined by using data provided by the Company from our broker.

(2) Loan-backed and structured securities with a recognized other-than-temporary impairment (OTTI) - Not Applicable

(3) Securities held that were other-than-temporarily impaired due to the present value of cash flows expected to be collected was less than the amortized cost of securities - Not Applicable

(4) All impaired securities for which an OTTI has not been recognized in earnings as a realized loss - Not Applicable

(5) Support for concluding impairments are not other-than-temporary - Not Applicable

E. Dollar Repurchase Agreements and/or Securities Lending Transactions - Not Applicable

F. Repurchase Agreements Transactions Accounted for as Secured Borrowing - Not Applicable

G. Reverse Repurchase Agreements Transactions Accounted for as Secured Borrowing - Not Applicable

H. Repurchase Agreements Transactions Accounted for as a Sale - Not Applicable

I. Reverse Repurchase Agreements Transactions Accounted for as a Sale - Not Applicable

J. Real Estate - Not Applicable

K. Low-Income Housing Tax Credits (LIHTC) - Not Applicable

Notes to the Financial Statements

5. Investments (Continued)

L. Restricted Assets

(1) Restricted assets (including pledged)

Restricted Asset Category	Gross (Admitted & Nonadmitted) Restricted							Current Year				
	Current Year						(6)	(7)	(8)	(9)	(10)	(11)
	(1)	(2)	(3)	(4)	(5)	(1+3)						
Total General Account (G/A)	G/A Supporting Protected Cell Account Activity	Total Protected Cell Account Restricted Assets	Protected Cell Account Assets Supporting G/A Activity	Total	Total From Prior Year	Increase / (Decrease)	Total Nonadmitted Restricted	Total Admitted Restricted	Gross (Admitted & Nonadmitted) Restricted to Total Assets, %	Admitted to Total Admitted Assets, %		
a. Subject to contractual obligation for which liability is not shown	\$ .....	\$ .....	\$ .....	\$ .....	\$ .....	\$ .....	\$ .....	\$ .....	.....	.....
b. Collateral held under security lending agreements	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
c. Subject to repurchase agreements	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
d. Subject to reverse repurchase agreements	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
e. Subject to dollar repurchase agreements	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
f. Subject to dollar reverse repurchase agreements	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
g. Placed under option contracts	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
h. Letter stock or securities restricted as to sale - excluding FHLB capital stock	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
i. FHLB capital stock	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
j. On deposit with states	62,246,477	.....	.....	.....	62,246,477	61,969,251	277,226	62,246,477	27.852	27.954
k. On deposit with other regulatory bodies	499,165	.....	.....	.....	499,165	498,697	468	499,165	0.223	0.224
l. Pledged as collateral to FHLB (including assets backing funding agreements)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
m. Pledged as collateral not captured in other categories	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
n. Other restricted assets	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
o. Total restricted assets	\$ 62,745,642	\$	\$	\$	\$ 62,745,642	\$ 62,467,948	\$ 277,694	\$ 62,745,642	28.075%	28.178%		

(2) Detail of assets pledged as collateral not captured in other categories (contracts that share similar characteristics, such as reinsurance and derivatives, are reported in the aggregate) - Not Applicable

(3) Detail of other restricted assets (contracts that share similar characteristics, such as reinsurance and derivatives, are reported in the aggregate) - Not Applicable

(4) Collateral received and reflected as assets within the reporting entity's financial statements - Not Applicable

M. Working Capital Finance Investments - Not Applicable

N. Offsetting and Netting of Assets and Liabilities - Not Applicable

O. 5GI Securities - Not Applicable

P. Short Sales - Not Applicable

Q. Prepayment Penalty and Acceleration Fees - Not Applicable

6. Joint Ventures, Partnerships and Limited Liability Companies

A. Investments in Joint Ventures, Partnerships or Limited Liability Companies that Exceed 10% of Admitted Assets

Detail for those greater than 10% of admitted assets

The Company owns 49.9% of CNI NEB RE ONE, LLC. This LLC Investment is carried at book value less encumbrances. The value at June 30, 2020 was \$22,945,250. There are no differences between the value at which the investment is carried and the amount of underlying equity in assets. CNI NEB RE ONE, LLC currently has assets of \$45,982,465, liabilities of \$0, equity of \$45,982,465 and a net income of \$539,011 for the quarter ending June 30, 2020.

B. Impaired Investments in Joint Ventures, Partnerships and Limited Liability Companies - Not Applicable

Notes to the Financial Statements

7. Investment Income

A. Due and Accrued Income Excluded from Surplus

The Company does not admit investment income due and accrued if amounts are over 90 days past due.

B. Total Amount Excluded - Not Applicable

8. Derivative Instruments - Not Applicable

9. Income Taxes

A. Components of the Net Deferred Tax Asset/(Liability)

(1) Change between years by tax character

	06/30/2020			12/31/2019			Change		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Ordinary	Capital	Total (Col 1+2)	Ordinary	Capital	Total (Col 4+5)	Ordinary (Col 1-4)	Capital (Col 2-5)	Total (Col 7+8)
(a) Gross deferred tax assets	\$ 3,421,755	\$	\$ 3,421,755	\$ 3,227,990	\$	\$ 3,227,990	\$ 193,765	\$	\$ 193,765
(b) Statutory valuation allowance adjustments									
(c) Adjusted gross deferred tax assets (1a - 1b)	3,421,755		3,421,755	3,227,990		3,227,990	193,765		193,765
(d) Deferred tax assets nonadmitted	751,051		751,051	679,568		679,568	71,483		71,483
(e) Subtotal net admitted deferred tax asset (1c - 1d)	\$ 2,670,704	\$	\$ 2,670,704	\$ 2,548,422	\$	\$ 2,548,422	\$ 122,282	\$	\$ 122,282
(f) Deferred tax liabilities	813,306	53,984	867,290	835,854		835,854	(22,548)	53,984	31,436
(g) Net admitted deferred tax asset/(net deferred tax liability) (1e - 1f)	\$ 1,857,398	\$ (53,984)	\$ 1,803,414	\$ 1,712,568	\$	\$ 1,712,568	\$ 144,830	\$ (53,984)	\$ 90,846

(2) Admission calculation components SSAP No. 101

	06/30/2020			12/31/2019			Change		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Ordinary	Capital	Total (Col 1+2)	Ordinary	Capital	Total (Col 4+5)	Ordinary (Col 1-4)	Capital (Col 2-5)	Total (Col 7+8)
(a) Federal income taxes paid in prior years recoverable through loss carrybacks	\$ 1,803,414	\$	\$ 1,803,414	\$ 1,712,568	\$	\$ 1,712,568	\$ 90,846	\$	\$ 90,846
(b) Adjusted gross deferred tax assets expected to be realized (excluding the amount of deferred tax assets from 2(a) above) after application of the threshold limitation (lesser of 2(b)1 and 2(b)2 below)									
1. Adjusted gross deferred tax assets expected to be realized following the balance sheet date									
2. Adjusted gross deferred tax assets allowed per limitation threshold	XXX	XXX	16,235,099	XXX	XXX	16,248,725	XXX	XXX	(13,626)
(c) Adjusted gross deferred tax assets (excluding the amount of deferred tax assets from 2(a) and 2(b) above) offset by gross deferred tax liabilities	867,290		867,290	835,854		835,854	31,436		31,436
(d) Deferred tax assets admitted as the result of application of SSAP No. 101									
Total (2(a) + 2(b) + 2(c))	\$ 2,670,704	\$	\$ 2,670,704	\$ 2,548,422	\$	\$ 2,548,422	\$ 122,282	\$	\$ 122,282

(3) Ratio used as basis of admissibility

	06/30/2020	12/31/2019
(a) Ratio percentage used to determine recovery period and threshold limitation amount	820.061%	822.007%
(b) Amount of adjusted capital and surplus used to determine recovery period and threshold limitation in 2(b)2 above	\$ 108,179,431	\$ 108,436,115

Notes to the Financial Statements

9. Income Taxes (Continued)

(4) Impact of tax-planning strategies

(a) Determination of adjusted gross deferred tax assets and net admitted deferred tax assets, by tax character as a percentage

	06/30/2020		12/31/2019		Change	
	(1)	(2)	(3)	(4)	(5)	(6)
	Ordinary	Capital	Ordinary	Capital	Ordinary (Col. 1-3)	Capital (Col. 2-4)
1. Adjusted gross DTAs amount from Note 9A1(c)	\$ 3,421,755	\$	\$ 3,227,990	\$	\$ 193,765	\$
2. Percentage of adjusted gross DTAs by tax character attributable to the impact of tax planning strategies	%	%	-%	-%	-%	-%
3. Net admitted adjusted gross DTAs amount from Note 9A1(e)	\$ 2,670,704	\$	\$ 2,548,422	\$	\$ 122,282	\$
4. Percentage of net admitted adjusted gross DTAs by tax character admitted because of the impact of tax planning strategies	%	%	-%	-%	-%	-%

(b) Use of reinsurance-related tax-planning strategies

Does the company's tax-planning strategies include the use of reinsurance? No

B. Regarding Deferred Tax Liabilities That Are Not Recognized - Not Applicable

C. Major Components of Current Income Taxes Incurred

Current income taxes incurred consist of the following major components:	(1)	(2)	(3)
	06/30/2020	12/31/2019	Change (1-2)
1. Current Income Tax			
(a) Federal	\$ 212,211	\$ 2,000,475	\$ (1,788,264)
(b) Foreign			
(c) Subtotal	\$ 212,211	\$ 2,000,475	\$ (1,788,264)
(d) Federal income tax on net capital gains		2,311,436	(2,311,436)
(e) Utilization of capital loss carry-forwards			
(f) Other			
(g) Federal and foreign income taxes incurred	\$ 212,211	\$ 4,311,911	\$ (4,099,700)
	(1)	(2)	(3)
	06/30/2020	12/31/2019	Change (1-2)
2. Deferred Tax Assets			
(a) Ordinary			
(1) Discounting of unpaid losses	\$ 2,651,606	\$ 2,490,552	\$ 161,054
(2) Unearned premium reserve	770,149	737,438	32,711
(3) Policyholder reserves			
(4) Investments			
(5) Deferred acquisition costs			
(6) Policyholder dividends accrual			
(7) Fixed assets			
(8) Compensation and benefits accrual			
(9) Pension accrual			
(10) Receivables - nonadmitted			
(11) Net operating loss carry-forward			
(12) Tax credit carry-forward			
(13) Other (including items less than 5% of total ordinary tax assets)			
(99) Subtotal	\$ 3,421,755	\$ 3,227,990	\$ 193,765
(b) Statutory valuation allowance adjustment			
(c) Nonadmitted	751,051	679,568	71,483
(d) Admitted ordinary deferred tax assets (2a99 - 2b - 2c)	\$ 2,670,704	\$ 2,548,422	\$ 122,282
(e) Capital			
(1) Investments	\$	\$	\$
(2) Net capital loss carry-forward			
(3) Real estate			
(4) Other (including items <5% of total capital tax assets)			
(99) Subtotal	\$	\$	\$
(f) Statutory valuation allowance adjustment			
(g) Nonadmitted			
(h) Admitted capital deferred tax assets (2e99 - 2f - 2g)			
(i) Admitted deferred tax assets (2d + 2h)	\$ 2,670,704	\$ 2,548,422	\$ 122,282

Notes to the Financial Statements

9. Income Taxes (Continued)

	(1) 06/30/2020	(2) 12/31/2019	(3) Change (1-2)
3. Deferred Tax Liabilities			
(a) Ordinary			
(1) Investments	\$ 61,724	\$ 48,625	\$ 13,099
(2) Fixed assets			
(3) Deferred and uncollected premium			
(4) Policyholder reserves			
(5) Other (including items <5% of total ordinary tax liabilities) [†]	751,582	787,229	(35,647)
(99) Subtotal	\$ 813,306	\$ 835,854	\$ (22,548)
(b) Capital			
(1) Investments	\$ 53,984		\$ 53,984
(2) Real estate			
(3) Other (including items <5% of total capital tax liabilities)			
(99) Subtotal	\$ 53,984		\$ 53,984
(c) Deferred tax liabilities (3a99 + 3b99)	\$ 867,290	\$ 835,854	\$ 31,436
4. Net deferred tax assets/liabilities (2i - 3c)	\$ 1,803,414	\$ 1,712,568	\$ 90,846

	(1) 06/30/2020	(2) 12/31/2019	(3) Change (1-2)
[†] Items >5% of total ordinary tax liabilities included in Other			
TCJA transition adjustment to loss reserve discounts	\$ 444,298	\$ 484,688	(40,390)
Safe harbor adjustment to premium acquisition expenses	307,284	302,540	4,744

D. Among the More Significant Book to Tax Adjustments

	06/30/2020	Effective Tax Rate
Provision computed at statutory rate	\$ 18,426	21.000%
Current Tax on Unrealized LLC Interest Income	29,415	33.524
Meals and entertainment	1,354	1.543
Penalties	688	0.784
Other Rounding	(1)	-0.001
Total	\$ 49,882	56.849%

	06/30/2020	Effective Tax Rate
Federal and foreign income taxes incurred	\$ 212,211	241.852%
Realized Capital Gains Tax		
Change in net deferred income taxes	(162,329)	-185.003
Total statutory income taxes	\$ 49,882	56.849%

E. Operating Loss and Tax Credit Carryforwards

- (1) Unused loss carryforwards available - Not Applicable
- (2) Income tax expense available for recoupment

The following is the amount of federal income taxes incurred in the current year and each preceding year, which are available for recoupment in the event of future net losses:

	Total
2018	\$
2019	4,171,985
2020	212,211

- (3) Deposits admitted under IRC Section 6603 - Not Applicable

F. Consolidated Federal Income Tax Return

- (1) The Company joins with a group of approximately 11 affiliated companies in the filing of a consolidated federal income tax return by AU Holding Company, Inc., the common parent company of the Group.
- (2) In addition, a complementary method is used which results in reimbursement by profitable affiliates to loss affiliates for tax benefits generated by loss affiliates. In the event the Company incurs a net operating loss in a future year in which its consolidated group reports consolidated taxable income, the Company will be entitled to reimbursement (from other profitable members of the consolidated group) for the income tax benefits attributable to the loss. All federal income taxes allocated to the Company for the current and preceding year may be recoverable in the event future net operating losses are reported for both the Company and on a consolidated basis for the group, depending upon the magnitude of such losses.

G. Federal or Foreign Income Tax Loss Contingencies

The Company does not have any tax loss contingencies for which it is reasonably possible that the total liability will significantly increase within twelve months of the reporting date.

H. Repatriation Transition Tax (RTT) - Not Applicable

Notes to the Financial Statements

9. Income Taxes (Continued)

I. Alternative Minimum Tax (AMT) Credit - Not Applicable

10. Information Concerning Parent, Subsidiaries, Affiliates and Other Related Parties

A. Nature of Relationships

The Company is a wholly owned subsidiary of North American Casualty Co. ("NAC"; "Direct Parent"), a subsidiary of AU Holding Company, Inc. ("AUH"; "Indirect Parent"). NAC became the direct parent of the Company on December 29, 2006 and became a member of Berkshire Hathaway, Inc. in 2006. At the same time, the Company re-domesticated from Ohio to Iowa with the approval of the Ohio Department of Insurance and the Iowa Insurance Division and contemporaneously filed a Form B Holding Company Statement to become part of an insurance holding company group. Through a series of transactions with Berkshire Hathaway, Inc. and a stockholder in AUH, through multiple Form As, Steven Menzies became the owner of 100% of AUH, the Ultimate Parent, on October 10, 2019 and indirectly the 100% owner of the Company. The Company redomiciled to New Mexico on January 4, 2020 with the approval of the Iowa Insurance Division.

B. Detail of Transactions Greater than ½% of Admitted Assets

The Company has an Agency Agreement in place with a related party, Applied Risk Services, Inc. (ARS) in which ARS receives premium and assessments from policyholders and pays commissions to brokers on behalf of the Company, which has been previously submitted and approved by the Iowa Insurance Division. ARS receives no fee for performing these services. These arrangements require that intercompany balances be settled within 30 days.

Prior to the change in Ultimate Parent on October 10, 2019, the Company had a Tax Allocation Agreement for its federal income taxes with Berkshire Hathaway Inc. which had been submitted and approved by the Iowa Insurance Division (see Note 9F). The Company remitted payments directly to Berkshire Hathaway Inc. All payments were made within 30 days of filing the consolidated federal corporate estimated and/or actual tax returns with the Internal Revenue Service.

The following chart contains the transactions during the period ending June 30, 2020 that are greater than ½% of admitted assets.

(1) Date of Transaction	(2) Explanation of Transaction	(3) Reporting Entity	(4) Name of Affiliate or Related Party	(5) Description of Assets Received by Reporting Entity	(6) Statement Value of Assets Received by Reporting Entity	(7) Description of Assets Transferred by Reporting Entity	(8) Statement Value of Assets Transferred by Reporting Entity
1/31/2020	Wire transfer from ARS	Continental Indemnity Company	Applied Risk Services, Inc.	December direct earned premium	9,839,653.21		
2/29/2020	Wire transfer from ARS	Continental Indemnity Company	Applied Risk Services, Inc.	January direct earned premium	10,319,362.58		
3/27/2020	Wire transfer from ARS	Continental Indemnity Company	Applied Risk Services, Inc.	February direct earned premium	8,969,065.00		
4/28/2020	Wire transfer from ARS	Continental Indemnity Company	Applied Risk Services, Inc.	March direct earned premium	8,710,830.99		
5/28/2020	Wire transfer from ARS	Continental Indemnity Company	Applied Risk Services, Inc.	April direct earned premium	6,523,594.36		
6/29/2020	Wire transfer from ARS	Continental Indemnity Company	Applied Risk Services, Inc.	May direct earned premium	8,589,205.44		

C. Amount of Transactions & Effects of Change in Terms of Intercompany Arrangements - Not Applicable

D. Amounts Due to or from Related Parties

All balances are settled within 30 days.

	June 30, 2020	December 31, 2019
Due to California Insurance Company	\$ 580,644	\$ 502,151
Due to Applied Risk Services	\$ 4,101	\$ 27,784
Total	\$ 584,745	\$ 529,935

Due from Pennsylvania Insurance Company	-	25
Due from Applied Underwriters, Inc.	-	6,233,107
Total	\$ -	\$ 6,233,132

E. Guarantees or Contingencies - Not Applicable

F. Management, Service Contracts, Cost Sharing Arrangements

Applied Underwriters, Inc. ("AUI"), a related party, has agreed to provide certain management, claims processing, premium processing, and data processing services for an affiliate of the Company, California Insurance Company, ("CIC"), at actual cost, pursuant to a Management Services Agreement for rent, salaries, and general administrative expenses which has been submitted and approved by the California Department of Insurance. The Company shares these costs as part of its Second Pooling Agreement.

G. Nature of Relationships that Could Affect Operations - Not Applicable

H. Amount Deducted for Investment in Upstream Company - Not Applicable

I. Detail of Investments in Affiliates Greater Than 10% of Admitted Assets - Not Applicable

J. Write-Down for Impairments of Investments in Subsidiary Controlled or Affiliated Companies - Not Applicable

K. Foreign Subsidiary Value Using CARVM - Not Applicable

L. Downstream Holding Company Value Using Look-Through Method - Not Applicable

M. All SCA Investments - Not Applicable

N. Investment in Insurance SCAs - Not Applicable

O. SCA and SSAP No. 48 Entity Loss Tracking - Not Applicable

11. Debt - Not Applicable

Notes to the Financial Statements

12. Retirement Plans, Deferred Compensation, Postemployment Benefits and Compensated Absences and Other Postretirement Benefit Plans - Not Applicable

13. Capital and Surplus, Dividend Restrictions and Quasi-Reorganizations

1. Outstanding Shares

The Company has 300 shares of \$13,333.34 par value common stock authorized, issued and outstanding.

2. Dividend Rate of Preferred Stock - Not Applicable

3. Dividend Restrictions

Under the insurance regulations of the NM ISO, the maximum amount of dividends that the Company may pay to shareholders in a twelve-month period is limited to the lesser of 10% of the Company's policyholders' surplus as of the most recent December 31 or the net income, not including realized capital gains, for the twelve-month period ending December 31 next preceding, and the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years. Accordingly, the maximum dividend payout to shareholders that may be made in 2020 without prior approval from the NM OSI is \$3,530,397.

4. Not applicable

5. Amount of Ordinary Dividends That May be Paid

Within the limitations of (3) above, there are no restrictions placed on the portion of the Company's profits that may be paid as ordinary dividends to stockholders.

6. Restrictions on Unassigned Surplus

There are no restrictions on the unassigned funds of the Company other than those described in paragraph (3) above.

7. Surplus Advances - Not Applicable

8. Stock Held for Special Purposes - Not Applicable

9. Changes in Special Surplus Funds - Not Applicable

10. Unassigned funds (surplus)

The portion of unassigned funds (surplus) represented or reduced by cumulative unrealized gains (losses) is (\$128,893) less applicable deferred taxes of \$0 for a net balance of (\$128,893).

11. Company-Issued Surplus Debentures or Similar Obligations - Not Applicable

12. Impact of Any Restatement Due to Prior Quasi-Reorganizations - Not Applicable

13. Effective Date(s) of Quasi-Reorganizations in the Prior 10 Years - Not Applicable

14. Liabilities, Contingencies and Assessments

A. Contingent Commitments - Not Applicable

B. Assessments

(1) Liability and Related Assets

The Company is subject to guaranty fund and other assessments by the states in which it writes business. Most assessments are accrued either at the time of assessment or in the case of premium-based assessments, at the time the premiums were written, or in the case of loss-based assessments, at the time the losses are incurred.

The Company has accrued a liability for guaranty funds and other assessments in the amount of \$1,629,148 and a related premium tax credit asset of \$391,660 as of June 30, 2020. The liability is included in the taxes, licenses and fees and is expected to be paid over the next two years. The asset is included in the guaranty funds receivable and is expected to be realized over the next ten years. These amounts represent management's best estimates based on information received from the states in which the Company writes business and may change due to many factors including the Company's share of the ultimate cost of current insurer insolvencies.

The Company has accrued a liability for premium-based assessments of \$6,151,165 and a related admitted receivable for policy surcharges is \$698,421 as of June 30, 2020. The liability is included in the taxes, licenses and fees and is expected to be paid over the next two years. The asset is included in aggregate write-ins for other than invested assets, and is expected to be realized over the next year.

(2) Assets (Liabilities) recognized from paid and accrued premium tax offsets and policy surcharges

a. Assets recognized from paid and accrued premium tax offsets and policy surcharges, prior year-end	\$.....	1,401,850
b. Decreases current year:		
Premium tax offsets applied	\$.....	4,798
Policy surcharges collected		5,399,303
c. Increases current year:		
Premium tax offsets accrued	\$.....	9,527
Policy surcharges accrued		5,082,803
d. Assets recognized from paid and accrued premium tax offsets and policy surcharges, current year-end	\$	<u>1,090,079</u>

(3) Guaranty fund liabilities and assets related to long-term care insolvencies - Not Applicable

C. Gain Contingencies - Not Applicable

D. Claims Related Extra Contractual Obligation and Bad Faith Losses Stemming from Lawsuits - Not Applicable

E. Product Warranties - Not Applicable

F. Joint and Several Liabilities - Not Applicable

Notes to the Financial Statements

14. Liabilities, Contingencies and Assessments (Continued)

G. All Other Contingencies

As of June 30, 2020 and December 31, 2019 the Company had admitted assets of \$12,849,242 and \$18,957,920, respectively in premiums receivable (Page 2, Line 15.1 and Page 2, Line 15.2) due from ceding insurers and its agent ARS. This amount, less any earned but unbilled premium will be collected within 30 days. The Company routinely assesses the collectability of these receivables. Based upon the Company's experience, as of June 30, 2020 any uncollectible premiums receivable are not expected to exceed the nonadmitted amounts totaling \$41,305 and, therefore, no additional provisions for uncollectible amounts have been recorded. The potential for any additional loss is not believed to be material to the Company's financial position.

Lawsuits arise against the Company in the normal course of business. Contingent liabilities arising from litigation, income taxes, and other matters are not considered material in relation to the financial position of the Company. The Company is contingently liable under certain structured settlement agreements (see Note 27A). The Company does not have any asset that it considers to be impaired.

15. Leases - Not Applicable

16. Information About Financial Instruments With Off-Balance-Sheet Risk And Financial Instruments With Concentrations of Credit Risk - Not Applicable

17. Sale, Transfer and Servicing of Financial Assets and Extinguishments of Liabilities - Not Applicable

18. Gain or Loss to the Reporting Entity from Uninsured Plans and the Uninsured Portion of Partially Insured Plans - Not Applicable

19. Direct Premium Written/Produced by Managing General Agents/Third Party Administrators - Not Applicable

20. Fair Value Measurements

A. Fair Value Measurement

(1) Fair value measurements at reporting date

Description for each class of asset or liability	Level 1	Level 2	Level 3	Net Asset Value (NAV)	Total
a. Assets at fair value					
Cash equivalents - Money market mutual funds	\$	\$	\$	157,454	157,454
Common stock - Industrial and miscellaneous			9,920,041		9,920,041
Total assets at fair value/NAV	\$	\$	\$ 9,920,041	\$ 157,454	\$ 10,077,495
b. Liabilities at fair value					
Total liabilities at fair value	\$	\$	\$	\$	\$

(2) Fair value measurements in Level 3 of the fair value hierarchy

Description	Ending balance as of 03/31/2020	Transfers Into Level 3	Transfers Out of Level 3	Total Gains and (Losses) Included in Net Income	Total Gains and (Losses) Included in Surplus	Purchases	Issuances	Sales	Settlements	Ending Balance for 06/30/2020
a. Assets										
Common stock - Industrial and miscellaneous	\$ 9,920,041	\$	\$	\$	\$	\$	\$	\$	\$	\$ 9,920,041
Total assets	\$ 9,920,041	\$	\$	\$	\$	\$	\$	\$	\$	\$ 9,920,041
b. Liabilities										
Total liabilities	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

(3) Policy on Transfers Into and Out of Level 3

The Company's policy is to recognize transfers in and out of Level 3 as of the actual date of the event or change in circumstances that caused the transfer.

(4) Inputs and techniques used for Level 2 and Level 3 fair values

Common stocks carried at fair value at Level 3 are based primarily on valuation techniques that are believed to be used by market participants. Unobservable inputs require management to make certain projections and assumptions about the information that would be used by market participants in pricing assets. The Company has no assets or liabilities measured at fair value in the Level 2 category.

(5) Derivatives - Not Applicable

B. Other Fair Value Disclosures - Not Applicable

C. Fair Values for All Financial Instruments by Level 1, 2 and 3

Type of Financial Instrument	Aggregate Fair Value	Admitted Assets	Level 1	Level 2	Level 3	Net Asset Value (NAV)	Not Practicable (Carrying Value)
Loans	\$ 42,016,893	\$ 42,016,893	\$	\$	\$ 42,016,893	\$	\$
Bonds	79,204,595	77,984,881		79,204,595			
Common stocks	9,920,041	9,920,041			9,920,041		
Cash, cash equivalents, and short-term investments	39,168,709	39,169,492	29,323,128	9,688,127		157,454	
Total Assets	170,310,238	169,091,307	29,323,128	88,892,722	51,936,934	157,454	

D. Not Practicable to Estimate Fair Value - Not Applicable

E. Nature and Risk of Investments Reported at NAV

In 2018, the Company began utilizing NAV as the valuation method for all of its money market funds. The money market funds owned by the Company are comprised of high quality, short-term investments and it is very unlikely any of these funds would be sold at a price other than NAV.

Notes to the Financial Statements

21. Other Items - Not Applicable

22. Events Subsequent

Subsequent events have been considered through August 12, 2020, the date of issuance of these statutory financial statements.

Type I. Recognized Subsequent Events

Not Applicable

Type II. Nonrecognized Subsequent Events

Not Applicable

23. Reinsurance

A. Unsecured Reinsurance Recoverables

The Company had unsecured aggregate recoverable for losses (paid and unpaid, including IBNR), loss adjustment expenses and unearned premiums, less ceded balances, that exceed 3% of policyholders' surplus with the following reinsurers as of June 30, 2020:

NAIC Group Code	Federal ID#	Name of Reinsurer	Amount
38865	94-1627528	California Insurance Company	\$ 509,730,540

B. Reinsurance Recoverable in Dispute - Not Applicable

C. Reinsurance Assumed and Ceded

- (1) Maximum amount of return commission that would have been due reinsurers if all of the company's reinsurance was canceled or if the company's insurance assumed was canceled

	Assumed Reinsurance		Ceded Reinsurance		Net	
	Premium Reserve	Commission Equity	Premium Reserve	Commission Equity	Premium Reserve	Commission Equity
a. Affiliates	\$ 3,742,933	\$	\$ 23,162,313	\$	\$ (19,419,380)	\$
b. All other	22,766,369	4,214,040			22,766,369	4,214,040
c. Total	<u>\$ 26,509,302</u>	<u>\$ 4,214,040</u>	<u>\$ 23,162,313</u>	<u>\$</u>	<u>\$ 3,346,989</u>	<u>\$ 4,214,040</u>
d. Direct unearned premium reserve			\$			

- (2) The additional or return commission, predicated on loss experience or on any other form of profit sharing arrangements in this statement as a result of existing contractual arrangements is accrued as follows:

Effective June 1, 2017, the Company's affiliate CIC entered into a quota-share reinsurance contract for cession of the CoverStar® product along with Munich Reinsurance America, Inc., Arch Reinsurance Company, Everest Reinsurance Company, Ace Property and Casualty Insurance Company, Odyssey Reinsurance Company, and The Cincinnati Insurance Company. The CoverStar® product is a specific product line of workers' compensation business written by the Company and its affiliates in the Second Pooling agreement. The cession to the external reinsurers is accounted for by CIC, the lead company in the Second Restated Pooling Agreement, and then pooled to the Company and other affiliates through the Second Pooling Agreement. This ceded reinsurance contract provides for additional or return commissions based on actual loss experience of the reinsured business. The quota-share reinsurance contract for cession of the CoverStar® product was renewed and is effective through March 31, 2021. Ace Property and Casualty Insurance Company is no longer a participant effective January 1, 2020. Munich Reinsurance America, Inc., Arch Reinsurance Company, and The Cincinnati Insurance Company are no longer participants effective April 1, 2020. This change reduces the cession to outside reinsurers from 80% to 15%. Base and contingent commissions were also changed. There were no other changes to the terms or other external reinsurers of the contract.

Effective May 1, 2018, the Company entered into a quota-share reinsurance agreement with State National Insurance Company, Inc., National Specialty Insurance Company, and United Specialty Insurance Company. The Company assumes 39.39% of business written for the 1st Contract Year and 21.39% of business written for the 2nd Contract Year in the commercial automobile liability and general liability (when written as part of a commercial auto policy) lines of business. This assumed reinsurance contract provides for additional or return commissions based on actual loss experience of the reinsured business. The below chart shows the amounts accrued for these additional commissions as of June 30, 2020.

Effective March 31, 2020, the Company entered into an adverse development reinsurance contract with Centauri Specialty Insurance Company. Where the Reinsurer agrees to indemnify the Company for the adverse loss development that may accrue to the Company under all of its policies, contracts, and binders of insurance or reinsurance.

Reinsurance

	Direct	Assumed	Ceded	Net
a. Contingent commission	\$	\$	\$	\$
b. Sliding scale adjustments		(3,396,406)		(3,396,406)
c. Other profit commission arrangements				
d. Total	<u>\$</u>	<u>\$ (3,396,406)</u>	<u>\$</u>	<u>\$ (3,396,406)</u>

- (3) Risks attributed to each of the company's protected cells - Not Applicable

D. Uncollectible Reinsurance - Not Applicable

E. Commutation of Ceded Reinsurance - Not Applicable

F. Retroactive Reinsurance

- (1) Retroactive reinsurance agreements that transfer liabilities for losses that have already occurred and that will generate special surplus transactions

The Company entered into a Retroactive Reinsurance Agreement with United Insurance Company to cede 14% of the Company's assumed commercial auto liability and general liability (when written as part of the commercial auto policy) business. The policies of the business ceded in this contract are effective as of May 1, 2018 through April 30, 2019. The following are the amounts under this agreement at and for the period ended June 30, 2020.

Notes to the Financial Statements

23. Reinsurance (Continued)

(a) Reserves transferred

	Reported Company	
	Assumed	Ceded
1. Initial reserves	\$ 8,759,598	\$ 8,759,598
2. Adjustments - prior year(s)		
3. Adjustment - current year		97,808
4. Current total	\$ 8,857,406	\$ 8,857,406

(b) Consideration paid or received

	Assumed	Ceded
1. Initial consideration	\$ 10,000	\$ (9,500,000)
2. Adjustments - prior year(s)		
3. Adjustments - current year		
4. Current total	\$ 10,000	\$ (9,500,000)

(c) Paid losses reimbursed or recovered

	Assumed	Ceded
1. Prior year(s)	\$	\$
2. Current year		
3. Current total	\$	\$

(d) Special surplus from retroactive reinsurance

	Assumed	Ceded
1. Initial surplus gain or loss	\$ 10,000	\$ (740,403)
2. Adjustments - prior year(s)		
3. Adjustments - current year	10,000	97,808
4. Current year restricted surplus		(642,594)
5. Cumulative total transferred to unassigned funds	\$	\$

(e) All cedents and reinsurers involved in all transactions included in summary totals above

Company	Assumed Amount	Ceded Amount
United Insurance Company	\$ 8,857,406	\$ 8,857,406
Total	\$ 8,857,406	\$ 8,857,406

(f) Total Paid Loss/LAE amounts recoverable (for authorized, unauthorized and certified reinsurers), any amounts more than 90 days overdue (for authorized, unauthorized and certified reinsurers), and for amounts recoverable the collateral held (for authorized, unauthorized and certified reinsurers) as respects amounts recoverable from unauthorized reinsurers

(1) Authorized reinsurers

Company	Total Paid/Loss/LAE Recoverable	Amount Over 90 Days Overdue
Total	\$	\$

(2) Unauthorized reinsurers

Company	Total Paid/Loss/LAE Recoverable	Amount Over 90 Days Overdue	Collateral Held
United Insurance Company	\$ 1,814,762	\$	\$
Total	\$ 1,814,762	\$	\$

(3) Certified reinsurers

Company	Total Paid/Loss/LAE Recoverable	Amount Over 90 Days Overdue	Collateral Held
Total	\$	\$	\$

G. Reinsurance Accounted for as a Deposit - Not Applicable

H. Disclosures for the Transfer of Property and Casualty Run-Off Agreements

- (1) Concurrent with the purchase of the Company from Continental Casualty Company (CCC), a subsidiary of Continental National American Group (CNA), on December 30, 2005, the Company entered into a reinsurance agreement related to runoff policies that were written prior to the sale of the Company for Surety, Auto Physical Damage, Commercial Auto Liability, and Commercial Multiple Peril. The Company is recording these run-off direct and assumed losses and reserves and ceding this business 100% back to a subsidiary of the seller, CCC.

Notes to the Financial Statements

23. Reinsurance (Continued)

(2) At and for the period ended June 30, 2020, the amount of direct, assumed, and ceded losses and LAE incurred is (\$5,415) and the related balance sheet direct, assumed, and ceded loss and LAE reserves is \$893,526. No consideration was paid.

- I. Certified Reinsurer Rating Downgraded or Status Subject to Revocation - Not Applicable
- J. Reinsurance Agreements Qualifying for Reinsurer Aggregation - Not Applicable

24. Retrospectively Rated Contracts & Contracts Subject to Redetermination

- A. Method Used to Estimate - Not Applicable
- B. Method Used to Record - Not Applicable
- C. Amount and Percent of Net Retrospective Premiums - Not Applicable
- D. Medical Loss Ratio Rebates Required Pursuant to the Public Health Service Act - Not Applicable
- E. Calculation of Nonadmitted Retrospective Premium - Not Applicable
- F. Risk-Sharing Provisions of the Affordable Care Act (ACA)

(1) Accident and health insurance premium subject to the Affordable Care Act risk-sharing provisions

Did the reporting entity write accident and health insurance premium which is subject to the Affordable Care Act risk sharing provisions?
NO

- (2) Impact of Risk-Sharing Provisions of the Affordable Care Act on admitted assets, liabilities and revenue for the current year - Not Applicable
- (3) Roll-forward of prior year ACA risk-sharing provisions for the following asset (gross of any nonadmission) and liability balances, along with the reasons for adjustments to prior year balance - Not Applicable
- (4) Roll-forward of risk corridors asset and liability balances by program benefit year - Not Applicable
- (5) ACA risk corridors receivable as of reporting date - Not Applicable

25. Changes in Incurred Losses and Loss Adjustment Expenses

A. Reasons for Changes in the Provision for Incurred Loss and Loss Adjustment Expenses Attributable to Insured Events of Prior Years

The estimated cost of loss and LAE attributable to insured events of prior years increased by \$3,403,000 during 2020. This increased the current calendar year losses and LAE incurred by this amount as shown in the chart below. The deficiency of \$3,403,000 is approximately 3.75% of the unpaid losses and LAE of \$90,761,000 at year end. The majority of this increase occurred in the workers' compensation line of business due to an increase in the adjusting and other expense ("AO") incurred, and the commercial auto liability line of business due to increase in AO and increase in the loss and defense and cost containment ("DCC"). The last two columns display which parts of this deficiency are attributable to the DCC portion of LAE and the AO portion of LAE.

Schedule P Lines of Business (000s omitted)	June 30, 2020				
	Current Calendar Year Losses & LAE Incurred	Current Loss Year Losses and LAE Incurred Sch. P - Part 1	Total Deficiency (Redundancy)	Loss and DCC Deficiency (Redundancy) Sch. P - Part 2	Impact of AO on Total Deficiency (Redundancy)
Commercial multiple peril	169	-	169	169	0
Workers' compensation	10,505	9,100	1,405	(221)	1,625
Other liability - claims made	26	40	(14)	(11)	(3)
Private passenger auto	106	0	106	106	0
Other commercial auto liability	3,495	1,549	1,946	1,873	73
Commercial auto physical damage	14	-	14	14	-
Surety	(75)	124	(199)	(187)	(12)
Warranty	1	1	-	-	-
Reinsurance - nonproportional assumed property	7	-	7	7	-
Legal	20	51	(31)	(24)	(7)
Totals	14,268	10,865	3,403	1,726	1,677

B. Significant Changes in Methodologies and Assumptions Used in Calculating the Liability for Unpaid Losses and Loss Adjustment Expenses - Not Applicable

26. Intercompany Pooling Arrangements

- A. On January 1, 2015, the Company entered into a Second Pooling Agreement with affiliates California Insurance Company ("CIC"), Illinois Insurance Company ("IIC"), Pennsylvania Insurance Company ("PIC"), and Texas Insurance Company ("TIC"). CIC is the lead company taking a 70% share, while the Company takes a 15% share, and IIC, PIC, and TIC each take a 5% share. The Second Pooling Agreement was previously approved by the CDI, the Iowa Insurance Division, and the Texas Department of Insurance.
- B. The Second Pooling Agreement includes Workers' Compensation, including mandatory reinsurance, Employment Practices Legal Insurance, Surety, and Warranty lines of business for years 2006 to current. In 2018, the Company began to assume commercial auto liability and general liability business from outside reinsurers; this business is no longer excluded from intercompany pooling per Addendum No. 3 of the Second Pooling Agreement which was approved by the Iowa Insurance Division.
- C. Cession to most outside reinsurers, subject to the pooling agreement, is ceded on CIC, the lead company, and then the net remaining business is pooled back to the other members of the pool, with the exception of the Minnesota Workers' Compensation Reinsurance Association business that is ceded on the Company and any run-off business on CIC, the Company, PIC, and TIC from prior to joining the pool (see Note 23H).
- D. Each pool participant has a contractual right of direct recovery from each non-affiliated reinsurer for business that is covered by the Second Pooling Agreement.
- E. There are no discrepancies related to the pooled business between the assumed and ceded reinsurance schedules of the pool participants.
- F. There is no provision for reinsurance or write-offs of uncollectible reinsurance for any ceded reinsurance contract subject to the pool.
- G. Amounts due to/from pool participants as of June 30, 2020 are as follows:

Notes to the Financial Statements

26. Intercompany Pooling Arrangements (Continued)

Name of Insurer	NAIC Company Code	Amounts Receivable	Amounts Payable
California Insurance Company	38865	\$ 13,622,993	\$ 9,457,220
Totals		\$ 13,622,993	\$ 9,457,220

27. Structured Settlements

A. Reserves Eliminated by Annuities and Unrecorded Loss Contingencies

The Company has purchased annuities from insurers under which the workers' compensation claimant is the payee (see Note 14F). These annuities have been used to reduce unpaid losses. The Company has contingent liabilities should the issuers of the annuity fail to perform under the terms of the annuity. Reserves eliminated due to the purchase of annuities and the contingent liabilities should the issuers of the annuity fail to perform under the terms of the annuity at June 30, 2020 are reflected in the following chart.

Loss Reserves Eliminated by Annuities	Unrecorded Loss Contingencies
\$..... 3,753,053	\$..... 9,218,268

B. Aggregate Statement Value of Annuities Due from Life Insurers Equaling or Exceeding 1% of Policyholders' Surplus - Not Applicable

28. Health Care Receivables - Not Applicable

29. Participating Policies - Not Applicable

30. Premium Deficiency Reserves

Premium deficiency reserves and the related expense are recognized when it is probable that losses, LAE and policy maintenance costs under a group of existing contracts will exceed net earned premiums, reinsurance recoveries, and anticipated investment income. The Company performed an evaluation as of July 24, 2020. Due to the collection of premium by the installment method in accordance with *SSAP, No. 53 - Property-Casualty Contracts - Premiums*, of the *Accounting Practices and Procedures Manual* for workers' compensation and surety lines of business and low loss ratios on the other liability, warranty, and legal (write-in) lines, no such reserves were required at June 30, 2020.

- Liability carried for premium deficiency reserves: \$—
- Date of the most recent evaluation of this liability: 07/24/2020
- Was anticipated investment income utilized in the calculation? NO

31. High Deductibles - Not Applicable

32. Discounting of Liabilities by Withdrawal Characteristics For Unpaid Losses or Unpaid Loss Adjustment Expenses - Not Applicable

33. Asbestos/Environmental Reserves

A. Does the company have on the books, or has it ever written an insured for which you have identified a potential for the existence of, a liability due to asbestos losses?

Yes (X) No ()

The Company has minimal exposure from asbestos losses that arose from the sale of general liability insurance. Note that the Company wrote its first general liability policy in 1988, and only three potential claims have ever been reported. Previously all liability policies that were in force were endorsed to exclude asbestos liability. Further, the Company discontinued writing policies with potential asbestos exposure in 2002.

- Direct basis - Not Applicable
- Assumed reinsurance basis - Not Applicable
- Net of ceded reinsurance basis - Not Applicable

B. Amount of the Ending Reserves for Bulk + IBNR Included in A (Loss & LAE) - Not Applicable

C. Amount of the Ending Reserves for Loss Adjustment Expenses Included in A (Case, Bulk + IBNR) - Not Applicable

D. Does the company have on the books, or has it ever written an insured for which you have identified a potential for the existence of, a liability due to environmental losses?

Yes (X) No ()

The Company's exposure to environmental losses includes some from policies specifically written to cover these exposures. Therefore, amounts related to those policies are excluded from this note per the annual statement instructions.

The Company has exposure to environmental losses arising from the sale of auto liability and general liability insurance written through 2002. Such exposure does not exist on business written after that time. The exposure on auto liability policies arose from sudden and accidental spills of materials in transit that have been classified as hazardous materials by the Environmental Protection Agency. To minimize its exposure, the Company used the ISO MCS 90 endorsement and carefully underwrote accounts as regards commodities being transported. The Company attached the ISO "Absolute Pollution Exclusion" to all general liability policies. The Company's only exposure arose when an insured purchased coverage for on premises pollution cleanup and removal.

Several court decisions have reduced the effectiveness of the "Absolute Pollution Exclusion" by limiting its application to traditional industrial pollution and which have potentially increased the scope of damages compensable under policies of insurance. Due to these developments, several claims (largely driven by expense costs) have now been recognized and classified as environmental losses in the table below.

Notes to the Financial Statements

33. Asbestos/Environmental Reserves (Continued)

(1) Direct basis

	2016	2017	2018	2019	June 30, 2020
a. Beginning reserves	\$ 947,796	\$ 926,030	\$ 899,854	\$ 888,606	\$ 883,274
b. Incurred losses and loss adjustment expense	(682)	1,919	4	83	
c. Calendar year payments for losses and loss adjustment expenses	21,084	28,095	11,252	5,415	
d. Ending reserves (d=a+b-c)	<u>\$ 926,030</u>	<u>\$ 899,854</u>	<u>\$ 888,606</u>	<u>\$ 883,274</u>	<u>\$ 883,274</u>

(2) Assumed reinsurance basis - Not Applicable

(3) Net of ceded reinsurance basis - Not Applicable

E. Amount of the Ending Reserves for Bulk + IBNR Included in D (Loss & LAE)

(1) Direct basis	\$ 759,606
(2) Assumed reinsurance basis	\$
(3) Net of ceded reinsurance basis	\$

F. Amount of the Ending Reserves for Loss Adjustment Expenses Included in D (Case, Bulk + IBNR)

(1) Direct basis	\$ 346,712
(2) Assumed reinsurance basis	\$
(3) Net of ceded reinsurance basis	\$

34. Subscriber Savings Accounts - Not Applicable

35. Multiple Peril Crop Insurance - Not Applicable

36. Financial Guaranty Insurance - Not Applicable

GENERAL INTERROGATORIES

PART 1 - COMMON INTERROGATORIES GENERAL

- 1.1 Did the reporting entity experience any material transactions requiring the filing of Disclosure of Material Transactions with the State of Domicile, as required by the Model Act? Yes [] No [X]
- 1.2 If yes, has the report been filed with the domiciliary state? Yes [] No []
- 2.1 Has any change been made during the year of this statement in the charter, by-laws, articles of incorporation, or deed of settlement of the reporting entity? Yes [X] No []
- 2.2 If yes, date of change:01/04/2020
- 3.1 Is the reporting entity a member of an Insurance Holding Company System consisting of two or more affiliated persons, one or more of which is an insurer? Yes [X] No []
If yes, complete Schedule Y, Parts 1 and 1A.
- 3.2 Have there been any substantial changes in the organizational chart since the prior quarter end? Yes [X] No []
- 3.3 If the response to 3.2 is yes, provide a brief description of those changes.
North American Casualty Company (Direct Parent) acquired Centauri Specialty Managers, Inc.....
- 3.4 Is the reporting entity publicly traded or a member of a publicly traded group? Yes [] No [X]
- 3.5 If the response to 3.4 is yes, provide the CIK (Central Index Key) code issued by the SEC for the entity/group.....
- 4.1 Has the reporting entity been a party to a merger or consolidation during the period covered by this statement? Yes [] No [X]
If yes, complete and file the merger history data file with the NAIC.
- 4.2 If yes, provide the name of entity, NAIC Company Code, and state of domicile (use two letter state abbreviation) for any entity that has ceased to exist as a result of the merger or consolidation.

1 Name of Entity	2 NAIC Company Code	3 State of Domicile

5. If the reporting entity is subject to a management agreement, including third-party administrator(s), managing general agent(s), attorney-in-fact, or similar agreement, have there been any significant changes regarding the terms of the agreement or principals involved? Yes [] No [X] NA []
If yes, attach an explanation.
- 6.1 State as of what date the latest financial examination of the reporting entity was made or is being made.12/31/2017
- 6.2 State the as of date that the latest financial examination report became available from either the state of domicile or the reporting entity. This date should be the date of the examined balance sheet and not the date the report was completed or released.12/31/2017
- 6.3 State as of what date the latest financial examination report became available to other states or the public from either the state of domicile or the reporting entity. This is the release date or completion date of the examination report and not the date of the examination (balance sheet date).05/17/2019
- 6.4 By what department or departments?
Iowa Insurance Division.....
- 6.5 Have all financial statement adjustments within the latest financial examination report been accounted for in a subsequent financial statement filed with Departments? Yes [X] No [] NA []
- 6.6 Have all of the recommendations within the latest financial examination report been complied with? Yes [X] No [] NA []
- 7.1 Has this reporting entity had any Certificates of Authority, licenses or registrations (including corporate registration, if applicable) suspended or revoked by any governmental entity during the reporting period? Yes [] No [X]
- 7.2 If yes, give full information:
.....
- 8.1 Is the company a subsidiary of a bank holding company regulated by the Federal Reserve Board?..... Yes [] No [X]
- 8.2 If response to 8.1 is yes, please identify the name of the bank holding company.
.....
- 8.3 Is the company affiliated with one or more banks, thrifts or securities firms?..... Yes [] No [X]
- 8.4 If response to 8.3 is yes, please provide below the names and location (city and state of the main office) of any affiliates regulated by a federal regulatory services agency [i.e. the Federal Reserve Board (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Securities Exchange Commission (SEC)] and identify the affiliate's primary federal regulator.]

1 Affiliate Name	2 Location (City, State)	3 FRB	4 OCC	5 FDIC	6 SEC

GENERAL INTERROGATORIES

9.1 Are the senior officers (principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions) of the reporting entity subject to a code of ethics, which includes the following standards? Yes No

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
 (b) Full, fair, accurate, timely and understandable disclosure in the periodic reports required to be filed by the reporting entity;
 (c) Compliance with applicable governmental laws, rules and regulations;
 (d) The prompt internal reporting of violations to an appropriate person or persons identified in the code; and
 (e) Accountability for adherence to the code.

9.11 If the response to 9.1 is No, please explain:

9.2 Has the code of ethics for senior managers been amended? Yes No

9.21 If the response to 9.2 is Yes, provide information related to amendment(s).

9.3 Have any provisions of the code of ethics been waived for any of the specified officers? Yes No

9.31 If the response to 9.3 is Yes, provide the nature of any waiver(s).

FINANCIAL

10.1 Does the reporting entity report any amounts due from parent, subsidiaries or affiliates on Page 2 of this statement?..... Yes No

10.2 If yes, indicate any amounts receivable from parent included in the Page 2 amount:..... \$

INVESTMENT

11.1 Were any of the stocks, bonds, or other assets of the reporting entity loaned, placed under option agreement, or otherwise made available for use by another person? (Exclude securities under securities lending agreements.) Yes No

11.2 If yes, give full and complete information relating thereto:
 \$62,745,642 on deposit with states or other regulatory bodies

12. Amount of real estate and mortgages held in other invested assets in Schedule BA: \$22,945,250

13. Amount of real estate and mortgages held in short-term investments: \$0

14.1 Does the reporting entity have any investments in parent, subsidiaries and affiliates? Yes No

14.2 If yes, please complete the following:

	1	2
	Prior Year-End Book/Adjusted Carrying Value	Current Quarter Book/Adjusted Carrying Value
14.21 Bonds	\$0	\$
14.22 Preferred Stock	\$0	\$
14.23 Common Stock	\$0	\$
14.24 Short-Term Investments	\$0	\$
14.25 Mortgage Loans on Real Estate	\$	\$
14.26 All Other	\$41,976,375	\$39,945,250
14.27 Total Investment in Parent, Subsidiaries and Affiliates (Subtotal Lines 14.21 to 14.26).....	\$41,976,375	\$39,945,250
14.28 Total Investment in Parent included in Lines 14.21 to 14.26 above	\$0	\$0

15.1 Has the reporting entity entered into any hedging transactions reported on Schedule DB? Yes No

15.2 If yes, has a comprehensive description of the hedging program been made available to the domiciliary state? Yes No NA

If no, attach a description with this statement.

16 For the reporting entity's security lending program, state the amount of the following as of the current statement date:

16.1 Total fair value of reinvested collateral assets reported on Schedule DL, Parts 1 and 2 \$0
 16.2 Total book adjusted/carrying value of reinvested collateral assets reported on Schedule DL, Parts 1 and 2 \$0
 16.3 Total payable for securities lending reported on the liability page \$0

GENERAL INTERROGATORIES

17. Excluding items in Schedule E – Part 3 – Special Deposits, real estate, mortgage loans and investments held physically in the reporting entity’s offices, vaults or safety deposit boxes, were all stocks, bonds and other securities, owned throughout the current year held pursuant to a custodial agreement with a qualified bank or trust company in accordance with Section 1, III – General Examination Considerations, F. Outsourcing of Critical Functions, Custodial or Safekeeping Agreements of the NAIC *Financial Condition Examiners Handbook*?

Yes No

17.1 For all agreements that comply with the requirements of the NAIC *Financial Condition Examiners Handbook*, complete the following:

1 Name of Custodian(s)	2 Custodian Address
First National Capital Markets.....	1620 Dodge Street, Omaha, NE 68197-1089.....
Wells Fargo Securities.....	608 Second Avenue South, Minneapolis, MN 55402.....
Security National Bank of Omaha.....	1120 South 101st Street, Omaha, NE 68124.....

17.2 For all agreements that do not comply with the requirements of the NAIC *Financial Condition Examiners Handbook*, provide the name, location and a complete explanation:

1 Name(s)	2 Location(s)	3 Complete Explanation(s)

17.3 Have there been any changes, including name changes, in the custodian(s) identified in 17.1 during the current quarter?

Yes No

17.4 If yes, give full and complete information relating thereto:

1 Old Custodian	2 New Custodian	3 Date of Change	4 Reason

17.5 Investment management – Identify all investment advisors, investment managers, broker/dealers, including individuals that have the authority to make investment decisions on behalf of the reporting entity. For assets that are managed internally by employees of the reporting entity, note as such. [“...that have access to the investment accounts”; “...handle securities”]

1 Name of Firm or Individual	2 Affiliation
RVK - investment advisor.....	U.....
Robert Stafford, Senior V.P. - manages assets.....	I.....

17.5097 For those firms/individuals listed in the table for Question 17.5, do any firms/individuals unaffiliated with the reporting entity (i.e., designated with a “U”) manage more than 10% of the reporting entity’s invested assets?

Yes No

17.5098 For firms/individuals unaffiliated with the reporting entity (i.e., designated with a “U”) listed in the table for Question 17.5, does the total assets under management aggregate to more than 50% of the reporting entity’s invested assets?

Yes No

17.6 For those firms or individuals listed in the table for 17.5 with an affiliation code of “A” (affiliated) or “U” (unaffiliated), provide the information for the table below.

1 Central Registration Depository Number	2 Name of Firm or Individual	3 Legal Entity Identifier (LEI)	4 Registered With	5 Investment Management Agreement (IMA) Filed
18005.....	RVK.....		SEC.....	NO.....

18.1 Have all the filing requirements of the *Purposes and Procedures Manual of the NAIC Investment Analysis Office* been followed?

Yes No

18.2 If no, list exceptions:

.....

19. By self-designating 5GI securities, the reporting entity is certifying the following elements for each self-designated 5GI security:

- a. Documentation necessary to permit a full credit analysis of the security does not exist or an NAIC CRP credit rating for an FE or PL security is not available.
- b. Issuer or obligor is current on all contracted interest and principal payments.
- c. The insurer has an actual expectation of ultimate payment of all contracted interest and principal.

Has the reporting entity self-designated 5GI securities?.....

Yes No

20. By self-designating PLGI securities, the reporting entity is certifying the following elements of each self-designated PLGI security:

- a. The security was purchased prior to January 1, 2018.
- b. The reporting entity is holding capital commensurate with the NAIC Designation reported for the security.
The NAIC Designation was derived from the credit rating assigned by an NAIC CRP in its legal capacity as a NRSRO which is
- c. shown on a current private letter rating held by the insurer and available for examination by state insurance regulators.
- d. The reporting entity is not permitted to share this credit rating of the PL security with the SVO.

Has the reporting entity self-designated PLGI securities?.....

Yes No

GENERAL INTERROGATORIES

21. By assigning FE to a Schedule BA non-registered private fund, the reporting entity is certifying the following elements of each self-designated FE fund:.....
- a. The shares were purchased prior to January 1, 2019.
 - b. The reporting entity is holding capital commensurate with the NAIC Designation reported for the security.
 - c. The security had a public credit rating(s) with annual surveillance assigned by an NAIC CRP in its legal capacity as an NRSRO prior to January 1, 2019.
 - d. The fund only or predominantly holds bonds in its portfolio.
 - e. The current reported NAIC Designation was derived from the public credit rating(s) with annual surveillance assigned by an NAIC CRP in its legal capacity as an NRSRO.
 - f. The public credit rating(s) with annual surveillance assigned by an NAIC CRP has not lapsed.

Has the reporting entity assigned FE to Schedule BA non-registered private funds that complied with the above criteria?

Yes [] No [X]

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE F - CEDED REINSURANCE

Showing All New Reinsurers - Current Year to Date

1 NAIC Company Code	2 ID Number	3 Name of Reinsurer	4 Domiciliary Jurisdiction	5 Type of Reinsurer	6 Certified Reinsurer Rating (1 through 6)	7 Effective Date of Certified Reinsurer Rating
NONE						

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE T - EXHIBIT OF PREMIUMS WRITTEN

Current Year to Date – Allocated by States and Territories

States, etc.	1 Active Status (a)	Direct Premiums Written		Direct Losses Paid (Deducting Salvage)		Direct Losses Unpaid		
		2 Current Year To Date	3 Prior Year To Date	4 Current Year To Date	5 Prior Year To Date	6 Current Year To Date	7 Prior Year To Date	
1. Alabama	AL	L	465,037	483,430	178,408	364,257	2,232,755	2,352,223
2. Alaska	AK	N	0	0	0	0	0	0
3. Arizona	AZ	L	26,882	0	41,636	0	166,576	0
4. Arkansas	AR	L	151,789	235,435	150,005	436,393	4,407,081	1,445,409
5. California	CA	L	0	0	0	0	0	0
6. Colorado	CO	L	289,157	636,428	557,960	735,831	1,888,188	1,589,671
7. Connecticut	CT	N	0	0	0	0	0	0
8. Delaware	DE	L	284,339	291,829	131,727	310,036	4,028,564	4,475,317
9. Dist. Columbia	DC	L	27,526	116,777	377	98,731	173,081	175,542
10. Florida	FL	L	1,046,112	1,930,945	536,396	1,268,766	5,203,428	5,447,918
11. Georgia	GA	L	0	0	0	0	0	0
12. Hawaii	HI	N	0	0	0	0	0	0
13. Idaho	ID	L	0	0	0	0	0	0
14. Illinois	IL	L	2,950,336	4,417,735	3,438,398	4,360,318	14,943,093	20,601,580
15. Indiana	IN	L	1,692,824	1,816,658	1,266,326	1,367,469	4,114,214	4,879,888
16. Iowa	IA	L	571,124	439,969	653,691	759,213	2,037,134	2,611,716
17. Kansas	KS	L	280,233	218,485	101,659	77,727	849,813	575,043
18. Kentucky	KY	L	152,926	371,744	456,247	543,663	2,678,907	3,326,544
19. Louisiana	LA	L	1,495,832	1,659,897	504,897	668,441	4,313,916	5,253,564
20. Maine	ME	L	97,780	92,570	35,523	(1,444)	244,845	302,994
21. Maryland	MD	L	858,519	1,578,095	573,589	887,824	5,676,278	5,223,891
22. Massachusetts	MA	L	3,212,608	3,551,306	1,780,860	3,966,794	12,650,960	11,784,625
23. Michigan	MI	L	325,996	732,760	557,297	710,345	3,450,736	5,123,574
24. Minnesota	MN	L	785,964	801,868	915,725	344,783	5,402,875	5,609,181
25. Mississippi	MS	L	207,093	274,243	18,879	291,703	322,608	831,975
26. Missouri	MO	L	344,988	710,367	81,690	727,385	2,282,147	2,545,793
27. Montana	MT	L	126,142	(17)	2,502	0	34,734	(3)
28. Nebraska	NE	L	269,102	241,820	103,771	214,644	730,966	812,478
29. Nevada	NV	L	0	0	0	0	0	0
30. New Hampshire	NH	L	557,084	797,511	859,023	597,045	1,724,876	2,365,794
31. New Jersey	NJ	L	12,096,259	14,822,019	7,846,103	10,159,927	84,367,478	95,665,820
32. New Mexico	NM	L	206,354	146,679	32,876	32,777	329,762	555,407
33. New York	NY	L	13,555,727	20,472,079	7,111,174	14,835,375	160,040,205	159,312,961
34. No. Carolina	NC	L	1,712,568	1,998,896	494,792	1,035,387	4,185,897	5,872,973
35. No. Dakota	ND	L	1,271	3,655	0	0	491	1,144
36. Ohio	OH	L	10,924	29,529	0	0	5,373	12,313
37. Oklahoma	OK	L	264,176	236,303	114,763	129,755	5,626,329	6,658,662
38. Oregon	OR	L	34,013	0	0	0	6,052	0
39. Pennsylvania	PA	L	2,566,044	4,167,985	1,064,902	3,761,727	13,404,380	18,095,529
40. Rhode Island	RI	L	313,999	628,312	470,191	289,003	827,284	902,158
41. So. Carolina	SC	L	692,507	552,354	176,434	117,850	1,089,203	1,378,939
42. So. Dakota	SD	L	103,618	112,797	16,086	221,285	188,994	200,968
43. Tennessee	TN	L	453,016	571,457	99,307	465,097	1,088,852	1,833,909
44. Texas	TX	L	171,424	0	6,631	0	36,862	0
45. Utah	UT	L	27,298	0	0	0	4,261	0
46. Vermont	VT	L	852,970	1,156,111	292,765	301,134	2,067,801	2,069,013
47. Virginia	VA	L	685,292	997,488	535,634	693,993	2,711,397	3,507,264
48. Washington	WA	L	0	0	0	0	31	145
49. West Virginia	WV	L	435,263	384,336	173,895	221,414	2,151,045	2,246,921
50. Wisconsin	WI	L	564,619	275,680	78,980	253,391	1,033,629	1,962,435
51. Wyoming	WY	L	4,804	875	0	0	2,040	1,120
52. American Samoa	AS	N	0	0	0	0	0	0
53. Guam	GU	N	0	0	0	0	0	0
54. Puerto Rico	PR	N	0	0	0	0	0	0
55. U.S. Virgin Islands	VI	N	0	0	0	0	0	0
56. Northern Mariana Islands	MP	N	0	0	0	0	0	0
57. Canada	CAN	N	0	0	0	0	0	0
58. Aggregate Other Alien	OT	XXX	0	0	0	0	0	0
59. Totals	XXX		50,971,539	67,956,410	31,461,119	51,248,039	358,725,141	387,612,398
DETAILS OF WRITE-INS								
58001.	XXX							
58002.	XXX							
58003.	XXX							
58998. Summary of remaining write-ins for Line 58 from overflow page.	XXX		0	0	0	0	0	0
58999. TOTALS (Lines 58001 through 58003 plus 58998) (Line 58 above)	XXX		0	0	0	0	0	0

(a) Active Status Counts

L – Licensed or Chartered – Licensed insurance carrier or domiciled RRG48 R – Registered – Non-domiciled RRGs 0
 E – Eligible – Reporting entities eligible or approved to write surplus lines in the state (other than their state of domicile – See DSLI) 0 Q – Qualified – Qualified or accredited reinsurer 0
 D – Domestic Surplus Lines Insurer (DSLII) – Reporting entities authorized to write surplus lines in the state of domicile 0 N – None of the above – Not allowed to write business in the state9
 Premiums are allocated to those states where the insured risks are located: main place of work for Workers' Compensation (including Employers' Liability endorsements).

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE Y
PART 1A – DETAIL OF INSURANCE HOLDING COMPANY SYSTEM

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Group Code	Group Name	NAIC Company Code	ID Number	Federal RSSD	CIK	Name of Securities Exchange if Publicly Traded (U.S. or International)	Names of Parent, Subsidiaries or Affiliates	Domiciliary Location	Relationship to Reporting Entity	Directly Controlled by (Name of Entity/Person)	Type of Control (Ownership, Board, Management, Attorney-in-Fact, Influence, Other)	If Control is Ownership Provide Percentage	Ultimate Controlling Entity(ies)/Person(s)	Is an SCA Filing Required? (Y/N)	*
			20-4746240				Steven Menzies		UIP		Ownership	0.0	Steven Menzies	N	0
							AU Holding Company, Inc.	DE	UIP	Steven Menzies	Ownership	100.0	Steven Menzies	N	0
			84-3312003				AUCRA NEB RE ONE LLC	NE	NIA	Applied Underwriters Captive Risk Assurance Company, Inc.	Ownership	49.9	Steven Menzies	N	0
			91-2106584				Applied Group Insurance Holdings, Inc.	HI	NIA	AU Holding Company, Inc.	Ownership	100.0	Steven Menzies	N	0
			20-3785366				North American Casualty Co.	NE	UDP	AU Holding Company, Inc.	Ownership	100.0	Steven Menzies	N	0
			84-3295303				AUCRA Land 1 LLC	NE	NIA	AUCRA NEB RE ONE LLC	Ownership	100.0	Steven Menzies	N	0
			84-3488475				CIC Land 4, LLC	NE	NIA	California Insurance Company	Ownership	100.0	Steven Menzies	N	0
			84-3311198				CIC NEB RE ONE LLC	NE	NIA	California Insurance Company	Ownership	49.9	Steven Menzies	N	0
			84-3311824				CIC NEB RE TWO LLC	NE	NIA	California Insurance Company	Ownership	49.9	Steven Menzies	N	0
			84-3311908				CIC NEB RE THREE LLC	NE	NIA	California Insurance Company	Ownership	49.9	Steven Menzies	N	0
			84-3243923				CIC Land 1, LLC	NE	NIA	CIC NEB RE ONE LLC	Ownership	100.0	Steven Menzies	N	0
			84-3290902				CIC Land 3, LLC	NE	NIA	CIC NEB RE THREE LLC	Ownership	100.0	Steven Menzies	N	0
			84-3259779				CIC Land 2, LLC	NE	NIA	CIC NEB RE TWO LLC	Ownership	100.0	Steven Menzies	N	0
			84-3326350				CNI Land 1, LLC	NE	DS	CNI NEB RE ONE LLC	Ownership	100.0	Steven Menzies	N	0
			84-3311709				CNI NEB RE ONE LLC	NE	DS	Continental Indemnity Company	Ownership	49.9	Steven Menzies	N	0
			84-3399777				IIC Land 1, LLC	NE	NIA	IIC NEB RE ONE LLC	Ownership	100.0	Steven Menzies	N	0
			84-4057482				IIC NEB RE ONE LLC	NE	NIA	Illinois Insurance Company	Ownership	49.9	Steven Menzies	N	0
04962	AU Holding Co Grp	14144	45-3353082				Applied Underwriters Captive Risk Assurance Company, Inc.	IA	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	38865	94-1627528				California Insurance Company	CA	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	00000	84-3264205				California Insurance Company	NM	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
			85-0568732				Centauri Acquisition Corporation LLC	DE	NIA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
			45-2689025				Centauri Specialty Managers, Inc.	FL	NIA	Centauri Acquisition Corporation LLC	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	28258	31-1191023				Continental Indemnity Company	NM	RE	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
							Commercial General Indemnity, Inc.	HI	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	12040	99-0338446				Illinois Insurance Company	NM	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	35246	58-1811419				Pennsylvania Insurance Company	NM	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	21962	23-1471444				Texas Insurance Company	TX	IA	North American Casualty Co	Ownership	100.0	Steven Menzies	N	0
04962	AU Holding Co Grp	16543	75-1906915												

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Asterisk	Explanation

PART 1 - LOSS EXPERIENCE

Line of Business	Current Year to Date			4 Prior Year to Date Direct Loss Percentage
	1 Direct Premiums Earned	2 Direct Losses Incurred	3 Direct Loss Percentage	
1. Fire			0.0	0.0
2. Allied lines			0.0	0.0
3. Farmowners multiple peril			0.0	0.0
4. Homeowners multiple peril			0.0	0.0
5. Commercial multiple peril			0.0	0.0
6. Mortgage guaranty			0.0	0.0
8. Ocean marine			0.0	0.0
9. Inland marine			0.0	0.0
10. Financial guaranty			0.0	0.0
11.1 Medical professional liability -occurrence			0.0	0.0
11.2 Medical professional liability -claims made			0.0	0.0
12. Earthquake			0.0	0.0
13. Group accident and health			0.0	0.0
14. Credit accident and health			0.0	0.0
15. Other accident and health			0.0	0.0
16. Workers' compensation	50,971,539	34,819,562	68.3	36.1
17.1 Other liability occurrence			0.0	0.0
17.2 Other liability-claims made			0.0	0.0
17.3 Excess Workers' Compensation			0.0	0.0
18.1 Products liability-occurrence			0.0	0.0
18.2 Products liability-claims made			0.0	0.0
19.1,19.2 Private passenger auto liability			0.0	0.0
19.3,19.4 Commercial auto liability			0.0	0.0
21. Auto physical damage			0.0	0.0
22. Aircraft (all perils)			0.0	0.0
23. Fidelity			0.0	0.0
24. Surety			0.0	0.0
26. Burglary and theft			0.0	0.0
27. Boiler and machinery			0.0	0.0
28. Credit			0.0	0.0
29. International			0.0	0.0
30. Warranty			0.0	0.0
31. Reinsurance - Nonproportional Assumed Property	XXX	XXX	XXX	XXX
32. Reinsurance - Nonproportional Assumed Liability	XXX	XXX	XXX	XXX
33. Reinsurance - Nonproportional Assumed Financial Lines	XXX	XXX	XXX	XXX
34. Aggregate write-ins for other lines of business	0	0	0.0	0.0
35. TOTALS	50,971,539	34,819,562	68.3	36.1
DETAILS OF WRITE-INS				
3401.			0.0	0.0
3402.			0.0	0.0
3403.			0.0	0.0
3498. Sum. of remaining write-ins for Line 34 from overflow page	0	0	0.0	0.0
3499. Totals (Lines 3401 through 3403 plus 3498) (Line 34)	0	0	0.0	0.0

PART 2 - DIRECT PREMIUMS WRITTEN

Line of Business	1	2	3
	Current Quarter	Current Year to Date	Prior Year Year to Date
1. Fire	0		0
2. Allied lines	0		0
3. Farmowners multiple peril	0		0
4. Homeowners multiple peril	0		0
5. Commercial multiple peril	0		0
6. Mortgage guaranty	0		0
8. Ocean marine	0		0
9. Inland marine	0		0
10. Financial guaranty	0		0
11.1 Medical professional liability-occurrence	0		0
11.2 Medical professional liability-claims made	0		0
12. Earthquake	0		0
13. Group accident and health	0		0
14. Credit accident and health	0		0
15. Other accident and health	0		0
16. Workers' compensation	23,066,430	50,971,539	67,956,410
17.1 Other liability occurrence	0		0
17.2 Other liability-claims made	0		0
17.3 Excess Workers' Compensation	0		0
18.1 Products liability-occurrence	0		0
18.2 Products liability-claims made	0		0
19.1,19.2 Private passenger auto liability	0		0
19.3,19.4 Commercial auto liability	0		0
21. Auto physical damage	0		0
22. Aircraft (all perils)	0		0
23. Fidelity	0		0
24. Surety	0		0
26. Burglary and theft	0		0
27. Boiler and machinery	0		0
28. Credit	0		0
29. International	0		0
30. Warranty	0		0
31. Reinsurance - Nonproportional Assumed Property	XXX	XXX	XXX
32. Reinsurance - Nonproportional Assumed Liability	XXX	XXX	XXX
33. Reinsurance - Nonproportional Assumed Financial Lines	XXX	XXX	XXX
34. Aggregate write-ins for other lines of business	0	0	0
35. TOTALS	23,066,430	50,971,539	67,956,410
DETAILS OF WRITE-INS			
3401.	0		0
3402.	0		0
3403.	0		0
3498. Sum. of remaining write-ins for Line 34 from overflow page	0	0	0
3499. Totals (Lines 3401 through 3403 plus 3498) (Line 34)	0	0	0

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

PART 3 (000 omitted)

LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES SCHEDULE

	1	2	3	4	5	6	7	8	9	10	11	12	13
Years in Which Losses Occurred	Prior Year-End Known Case Loss and LAE Reserves	Prior Year-End IBNR Loss and LAE Reserves	Total Prior Year-End Loss and LAE Reserves (Cols. 1 + 2)	2020 Loss and LAE Payments on Claims Reported as of Prior Year-End	2020 Loss and LAE Payments on Claims Unreported as of Prior Year-End	Total 2020 Loss and LAE Payments (Cols. 4 + 5)	Q.S. Date Known Case Loss and LAE Reserves on Claims Reported and Open as of Prior Year End	Q.S. Date Known Case Loss and LAE Reserves on Claims Reported or Reopened Subsequent to Prior Year End	Q.S. Date IBNR Loss and LAE Reserves	Total Q.S. Loss and LAE Reserves (Cols.7 + 8 + 9)	Prior Year-End Known Case Loss and LAE Reserves Developed (Savings)/ Deficiency (Cols. 4 + 7 minus Col. 1)	Prior Year-End IBNR Loss and LAE Reserves Developed (Savings)/ Deficiency (Cols. 5 + 8 + 9 minus Col. 2)	Prior Year-End Total Loss and LAE Reserve Developed (Savings)/ Deficiency (Cols. 11 + 12)
1. 2017 + Prior	15,230	25,936	41,166	3,885	53	3,938	16,614	65	23,059	39,738	5,269	(2,759)	2,510
2. 2018	5,929	13,570	19,499	2,750	41	2,791	5,585	52	9,777	15,415	2,406	(3,699)	(1,293)
3. Subtotals 2018 + prior	21,159	39,506	60,664	6,634	94	6,728	22,199	117	32,837	55,153	7,675	(6,458)	1,217
4. 2019	8,842	21,254	30,097	4,815	286	5,101	8,785	494	17,903	27,182	4,758	(2,572)	2,186
5. Subtotals 2019 + prior	30,001	60,760	90,761	11,449	380	11,829	30,984	611	50,739	82,335	12,432	(9,030)	3,403
6. 2020	XXX	XXX	XXX	XXX	1,201	1,201	XXX	1,969	7,695	9,664	XXX	XXX	XXX
7. Totals	30,001	60,760	90,761	11,449	1,581	13,030	30,984	2,581	58,434	91,999	12,432	(9,030)	3,403
8. Prior Year-End Surplus As Regards Policy-holders	110,149										Col. 11, Line 7 As % of Col. 1, Line 7	Col. 12, Line 7 As % of Col. 2, Line 7	Col. 13, Line 7 As % of Col. 3, Line 7
											1. 41.4	2. (14.9)	3. 3.7
													Col. 13, Line 7 Line 8
													4. 3.1

SUPPLEMENTAL EXHIBITS AND SCHEDULES INTERROGATORIES

The following supplemental reports are required to be filed as part of your statement filing. However, in the event that your company does not transact the type of business for which the special report must be filed, your response of **NO** to the specific interrogatory will be accepted in lieu of filing a "NONE" report and a bar code will be printed below. If the supplement is required of your company but is not being filed for whatever reason enter **SEE EXPLANATION** and provide an explanation following the interrogatory questions.

	<u>Response</u>
1. Will the Trusteed Surplus Statement be filed with the state of domicile and the NAIC with this statement?	.....NO.....
2. Will Supplement A to Schedule T (Medical Professional Liability Supplement) be filed with this statement?	.....NO.....
3. Will the Medicare Part D Coverage Supplement be filed with the state of domicile and the NAIC with this statement?	.....NO.....
4. Will the Director and Officer Insurance Coverage Supplement be filed with the state of domicile and the NAIC with this statement?	.....NO.....

Explanation:

Bar Code:

1. 
2 8 2 5 8 2 0 2 0 4 9 0 0 0 0 0 2
2. 
2 8 2 5 8 2 0 2 0 4 5 5 0 0 0 0 2
3. 
2 8 2 5 8 2 0 2 0 3 6 5 0 0 0 0 2
4. 
2 8 2 5 8 2 0 2 0 5 0 5 0 0 0 0 2

OVERFLOW PAGE FOR WRITE-INS

PQ002 Additional Aggregate Lines for Page 02 Line 25.

*ASSETS

	1	2	3	4
	Assets	Nonadmitted Assets	Net Admitted Assets (Cols. 1 - 2)	December 31 Prior Year Net Admitted Assets
2504. Equity in pools and associations.....	613,687		613,687	724,971
2505. Premium tax receivable.....	465,667		465,667	186,794
2506. Other receivables.....			0	81,845
2507. Other receivable - related party.....			0	6,233,107
2597. Summary of remaining write-ins for Line 25 from Page 02	1,079,354	0	1,079,354	7,226,717

PQ003 Additional Aggregate Lines for Page 03 Line 25.

*LIAB

	1	2
	Current Statement Date	December 31, Prior Year
2504. Other liability - related party.....	4,101	27,784
2597. Summary of remaining write-ins for Line 25 from Page 03	4,101	27,784

SCHEDULE A – VERIFICATION

Real Estate

	1 Year To Date	2 Prior Year Ended December 31
1. Book/adjusted carrying value, December 31 of prior year	0	0
2. Cost of acquired:		
2.1 Actual cost at time of acquisition	0	0
2.2 Additional investment made after acquisition	0	0
3. Current year change in encumbrances	0	0
4. Total gain (loss) on disposals	0	0
5. Deduct amounts received on disposals	0	0
6. Total foreign exchange change in book/adjusted carrying value	0	0
7. Deduct current year's other-than-temporary impairment recognized	0	0
8. Deduct current year's depreciation	0	0
9. Book/adjusted carrying value at the end of current period (Lines 1+2+3+4-5+6-7-8)	0	0
10. Deduct total nonadmitted amounts	0	0
11. Statement value at end of current period (Line 9 minus Line 10)	0	0

NONE

SCHEDULE B – VERIFICATION

Mortgage Loans

	1 Year To Date	2 Prior Year Ended December 31
1. Book value/recorded investment excluding accrued interest, December 31 of prior year	0	0
2. Cost of acquired:		
2.1 Actual cost at time of acquisition	0	0
2.2 Additional investment made after acquisition	0	0
3. Capitalized deferred interest and other	0	0
4. Accrual of discount	0	0
5. Unrealized valuation increase (decrease)	0	0
6. Total gain (loss) on disposals	0	0
7. Deduct amounts received on disposals	0	0
8. Deduct amortization of premium and mortgage interest points and commitment fees	0	0
9. Total foreign exchange change in book value/recorded investment excluding accrued interest	0	0
10. Deduct current year's other-than-temporary impairment recognized	0	0
11. Book value/recorded investment excluding accrued interest at end of current period (Lines 1+2+3+4+5+6-7-8+9-10)	0	0
12. Total valuation allowance	0	0
13. Subtotal (Line 11 plus Line 12)	0	0
14. Deduct total nonadmitted amounts	0	0
15. Statement value at end of current period (Line 13 minus Line 14)	0	0

NONE

SCHEDULE BA – VERIFICATION

Other Long-Term Invested Assets

	1 Year To Date	2 Prior Year Ended December 31
1. Book/adjusted carrying value, December 31 of prior year	62,993,267	0
2. Cost of acquired:		
2.1 Actual cost at time of acquisition	10,233,107	61,866,561
2.2 Additional investment made after acquisition	592,769	7,230,920
3. Capitalized deferred interest and other	0	0
4. Accrual of discount	0	0
5. Unrealized valuation increase (decrease)	(128,893)	128,893
6. Total gain (loss) on disposals	0	0
7. Deduct amounts received on disposals	8,728,107	6,233,107
8. Deduct amortization of premium and depreciation	0	0
9. Total foreign exchange change in book/adjusted carrying value	0	0
10. Deduct current year's other-than-temporary impairment recognized	0	0
11. Book/adjusted carrying value at end of current period (Lines 1+2+3+4+5+6-7-8+9-10)	64,962,143	62,993,267
12. Deduct total nonadmitted amounts	0	0
13. Statement value at end of current period (Line 11 minus Line 12)	64,962,143	62,993,267

SCHEDULE D – VERIFICATION

Bonds and Stocks

	1 Year To Date	2 Prior Year Ended December 31
1. Book/adjusted carrying value of bonds and stocks, December 31 of prior year	96,130,286	120,874,343
2. Cost of bonds and stocks acquired	11,098,177	50,222,351
3. Accrual of discount	94,128	189,952
4. Unrealized valuation increase (decrease)	0	(3,798,588)
5. Total gain (loss) on disposals	0	10,982,423
6. Deduct consideration for bonds and stocks disposed of	19,321,417	82,260,458
7. Deduct amortization of premium	96,252	79,737
8. Total foreign exchange change in book/adjusted carrying value	0	0
9. Deduct current year's other-than-temporary impairment recognized	0	0
10. Total investment income recognized as a result of prepayment penalties and/or acceleration fees	0	0
11. Book/adjusted carrying value at end of current period (Lines 1+2+3+4+5-6-7+8-9+10)	87,904,922	96,130,286
12. Deduct total nonadmitted amounts	0	0
13. Statement value at end of current period (Line 11 minus Line 12)	87,904,922	96,130,286

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE D - PART 1B

Showing the Acquisitions, Dispositions and Non-Trading Activity
During the Current Quarter for all Bonds and Preferred Stock by NAIC Designation

NAIC Designation	1 Book/Adjusted Carrying Value Beginning of Current Quarter	2 Acquisitions During Current Quarter	3 Dispositions During Current Quarter	4 Non-Trading Activity During Current Quarter	5 Book/Adjusted Carrying Value End of First Quarter	6 Book/Adjusted Carrying Value End of Second Quarter	7 Book/Adjusted Carrying Value End of Third Quarter	8 Book/Adjusted Carrying Value December 31 Prior Year
BONDS								
1. NAIC 1 (a).....	96,860,988	9,688,910	18,858,219	(17,888)	96,860,988	87,673,791	0	86,210,245
2. NAIC 2 (a).....	0				0	0	0	0
3. NAIC 3 (a).....	0				0	0	0	0
4. NAIC 4 (a).....	0				0	0	0	0
5. NAIC 5 (a).....	0				0	0	0	0
6. NAIC 6 (a).....	0				0	0	0	0
7. Total Bonds	96,860,988	9,688,910	18,858,219	(17,888)	96,860,988	87,673,791	0	86,210,245
PREFERRED STOCK								
8. NAIC 1.....	0				0	0	0	0
9. NAIC 2.....	0				0	0	0	0
10. NAIC 3.....	0				0	0	0	0
11. NAIC 4.....	0				0	0	0	0
12. NAIC 5.....	0				0	0	0	0
13. NAIC 6.....	0				0	0	0	0
14. Total Preferred Stock.....	0	0	0	0	0	0	0	0
15. Total Bonds & Preferred Stock	96,860,988	9,688,910	18,858,219	(17,888)	96,860,988	87,673,791	0	86,210,245

(a) Book/Adjusted Carrying Value column for the end of the current reporting period includes the following amount of short-term and cash equivalent bonds by NAIC designation: NAIC 1 \$ 9,688,910 ; NAIC 2 \$; NAIC 3 \$; NAIC 4 \$; NAIC 5 \$; NAIC 6 \$

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SCHEDULE DA - PART 1

Short-Term Investments

	1	2	3	4	5
	Book/Adjusted Carrying Value	Par Value	Actual Cost	Interest Collected Year To Date	Paid for Accrued Interest Year To Date
9199999	9,688,910	XXX	9,688,910		

SCHEDULE DA - VERIFICATION

Short-Term Investments

	1	2
	Year To Date	Prior Year Ended December 31
1. Book/adjusted carrying value, December 31 of prior year.....	0	24,094,983
2. Cost of short-term investments acquired	9,688,910	54,939,441
3. Accrual of discount		102,383
4. Unrealized valuation increase (decrease).....		0
5. Total gain (loss) on disposals		0
6. Deduct consideration received on disposals		79,136,807
7. Deduct amortization of premium.....		0
8. Total foreign exchange change in book/adjusted carrying value.....		0
9. Deduct current year's other-than-temporary impairment recognized.....		0
10. Book/adjusted carrying value at end of current period (Lines 1+2+3+4+5-6-7+8-9).....	9,688,910	0
11. Deduct total nonadmitted amounts.....		0
12. Statement value at end of current period (Line 10 minus Line 11)	9,688,910	0

Schedule DB - Part A - Verification

NONE

Schedule DB - Part B - Verification

NONE

Schedule DB - Part C - Section 1

NONE

Schedule DB - Part C - Section 2

NONE

Schedule DB - Verification

NONE

SCHEDULE E – PART 2 – VERIFICATION

(Cash Equivalents)

	1 Year To Date	2 Prior Year Ended December 31
1. Book/adjusted carrying value, December 31 of prior year.....	358,019	24,086,590
2. Cost of cash equivalents acquired	8,280	320,222,004
3. Accrual of discount		0
4. Unrealized valuation increase (decrease)		0
5. Total gain (loss) on disposals.....		24,414
6. Deduct consideration received on disposals	208,845	343,974,989
7. Deduct amortization of premium		0
8. Total foreign exchange change in book/adjusted carrying value		0
9. Deduct current year's other-than-temporary impairment recognized		0
10. Book/adjusted carrying value at end of current period (Lines 1+2+3+4+5-6-7+8-9)	157,454	358,019
11. Deduct total nonadmitted amounts		0
12. Statement value at end of current period (Line 10 minus Line 11)	157,454	358,019

Schedule A - Part 2

NONE

Schedule A - Part 3

NONE

Schedule B - Part 2

NONE

Schedule B - Part 3

NONE

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE BA - PART 2

Showing Other Long-Term Invested Assets ACQUIRED AND ADDITIONS MADE During the Current Quarter

1 CUSIP Identification	2 Name or Description	3 Location		5 Name of Vendor or General Partner	6 NAIC Designation and Administrative Symbol	7 Date Originally Acquired	8 Type and Strategy	9 Actual Cost at Time of Acquisition	10 Additional Investment Made After Acquisition	11 Amount of Encumbrances	12 Commitment for Additional Investment	13 Percentage of Ownership
		City	State									
Joint Venture, Partnership or Limited Liability Co. Interests for Which the Underlying Assets Have the Characteristics of: Real Estate - Affiliated												
000000-00-0	CNI NEB RE ONE, LLC	Omaha	NE	Applied Underwriters		10/09/2019		24,616,561	571,831			49,900
2299999 - Joint Venture, Partnership or Limited Liability Co. Interests for Which the Underlying Assets Have the Characteristics of: Real Estate - Affiliated												
								24,616,561	571,831	0	0	XXX
4899999 - Subtotals - Unaffiliated												
4999999 - Subtotals - Affiliated												
5099999 Totals												

SCHEDULE BA - PART 3

Showing Other Long-Term Invested Assets DISPOSED, Transferred or Repaid During the Current Quarter

1 CUSIP Identification	2 Name or Description	3 Location		5 Name of Purchaser or Nature of Disposal	6 Date Originally Acquired	7 Disposal Date	8 Book/ Adjusted Carrying Value Less Encumbrances Prior Year	9 Change in Book/Adjusted Carrying Value						15 Book/Adjusted Carrying Value Less Encumbrances on Disposal	16 Consideration	17 Foreign Exchange Gain (Loss) on Disposal	18 Realized Gain (Loss) on Disposal	19 Total Gain (Loss) on Disposal	20 Investment Income
		City	State					9 Unrealized Valuation Increase (Decrease)	10 Current Year's (Depreciation) or (Amortization)/ Accretion	11 Current Year's Other Than Temporary Impairment Recognized	12 Capitalized Deferred Interest and Other	13 Total Change in B./A.C.V. (9+10-11+12)	14 Total Foreign Exchange Change in B./A.C.V.						
Joint Venture, Partnership or Limited Liability Co. Interests for Which the Underlying Assets Have the Characteristics of: Real Estate - Affiliated																			
000000-00-0	CNI NEB RE ONE, LLC	Omaha	NE	Income Distribution	10/09/2019	06/26/2020	24,976,374							2,495,000			0	268,967	
2299999 - Joint Venture, Partnership or Limited Liability Co. Interests for Which the Underlying Assets Have the Characteristics of: Real Estate - Affiliated																			
							24,976,374	0	0	0	0	0	0	2,495,000	0	0	0	268,967	
Non-collateral Loans - Affiliated																			
000000-00-0	Applied Underwriters (Related Party)	Omaha	NE	Loan Repayment	01/31/2020	04/27/2020								6,233,107			0	34,979	
3299999 - Non-collateral Loans - Affiliated																			
							0	0	0	0	0	0	0	6,233,107	0	0	0	34,979	
4899999 - Subtotals - Unaffiliated																			
4999999 - Subtotals - Affiliated																			
5099999 Totals																			

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STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE D - PART 3

Show All Long-Term Bonds and Stock Acquired During the Current Quarter

1 CUSIP Identification	2 Description	3 Foreign	4 Date Acquired	5 Name of Vendor	6 Number of Shares of Stock	7 Actual Cost	8 Par Value	9 Paid for Accrued Interest and Dividends	10 NAIC Designation and Administrative Symbol
<p>NONE</p>									
9999999 Totals					0	0	XXX	0	XXX

STATEMENT AS OF JUNE 30, 2020 OF THE Continental Indemnity Company

SCHEDULE D - PART 4

Show All Long-Term Bonds and Stock Sold, Redeemed or Otherwise Disposed of During the Current Quarter

1 CUSIP Identifi- cation	2 Description	3 F o r e i g n	4 Disposal Date	5 Name of Purchaser	6 Number of Shares of Stock	7 Consideration	8 Par Value	9 Actual Cost	10 Prior Year Book/Adjusted Carrying Value	Change in Book/Adjusted Carrying Value					16 Book/ Adjusted Carrying Value at Disposal Date	17 Foreign Exchange Gain (Loss) on Disposal	18 Realized Gain (Loss) on Disposal	19 Total Gain (Loss) on Disposal	20 Bond Interest/Stock Dividends Received During Year	21 Stated Contractual Maturity Date	22 NAIC Designation and Administrative Symbol
										11 Unrealized Valuation Increase/ (Decrease)	12 Current Year's (Amortization)/ Accretion	13 Current Year's Other Than Temporary Impairment Recognized	14 Total Change in B./A.C.V. (11+12-13)	15 Total Foreign Exchange Change in B./A.C.V.							
Bonds - U.S. Governments																					
912828-K5-8	United States Treasury Note		04/30/2020	MATURITY	XXX	6,300,000	6,300,000	6,364,336	6,306,091		(6,091)		(6,091)		6,300,000		0	0	43,313	04/30/2020	1
912828-X2-1	United States Treasury Note		04/15/2020	MATURITY	XXX	11,500,000	11,500,000	11,468,252	11,496,225		3,776		3,776		11,500,000		0	0	86,250	04/15/2020	1
0599999 - Bonds - U.S. Governments						17,800,000	17,800,000	17,832,588	17,802,316	0	(2,315)	0	(2,315)	0	17,800,000	0	0	0	129,563	XXX	XXX
Bonds - U.S. Special Revenue and Special Assessment and all Non-Guaranteed Obligations of Agencies and Authorities of Governments and Their Political Subdivisions																					
3140X5-DG-5	FNMA SUPER INT 15 YEAR		06/25/2020	PRINCIPAL RECEIPT	XXX	1,058,219	1,058,219	1,087,321	1,087,351		(29,132)		(29,132)		1,058,219		0	0	13,972	11/01/2034	1
3199999 - Bonds - U.S. Special Revenue and Special Assessment and all Non-Guaranteed Obligations of Agencies and Authorities of Governments and Their Political Subdivisions						1,058,219	1,058,219	1,087,321	1,087,351	0	(29,132)	0	(29,132)	0	1,058,219	0	0	0	13,972	XXX	XXX
8399997 - Bonds - Subtotals - Bonds - Part 4						18,858,219	18,858,219	18,919,909	18,889,667	0	(31,447)	0	(31,447)	0	18,858,219	0	0	0	143,535	XXX	XXX
8399999 - Bonds - Subtotals - Bonds						18,858,219	18,858,219	18,919,909	18,889,667	0	(31,447)	0	(31,447)	0	18,858,219	0	0	0	143,535	XXX	XXX
9999999 Totals						18,858,219	XXX	18,919,909	18,889,667	0	(31,447)	0	(31,447)	0	18,858,219	0	0	0	143,535	XXX	XXX

E05

Schedule DB - Part A - Section 1

NONE

Schedule DB - Part B - Section 1

NONE

Schedule DB - Part D - Section 1

NONE

Schedule DB - Part D - Section 2

NONE

Schedule DB - Part E

NONE

Schedule DL - Part 1

NONE

Schedule DL - Part 2

NONE

Exhibit 8


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APPLIED UNDERWRITERS® FOUNDER, STEVE MENZIES, ACQUIRES INSURANCE COMPANIES FROM BERKSHIRE HATHAWAY IN \$920MM TRANSACTION

"A" rated national insurer has started construction on new Omaha operational center to house up to 2,000 in staff, as planned expansion continues apace

(Omaha, Neb. Oct 16, 2019) Applied Underwriters, Inc. and its subsidiary North American Casualty Co. ("A" rated, A.M. Best), a group of diversified, national financial services companies, has been acquired by Applied's founder, Steve Menzies, joined by the Quasha Group led by Quadrant Management. The transaction, valued at \$920MM, included the buyout of all other shareholders including the 81% of the 25 year old Company's stock held by Berkshire Hathaway Inc.

Widely known for its award winning Workers' Compensation programs, Applied has consistently produced industry-leading low loss ratios and high profits, and enjoys a stellar reputation for excellence in the care of injured workers. Applied serves businesses of all sizes across the United States and their hundreds of thousands of employees, working through more than 20,000 independent brokers. The Company is headquartered in Omaha, Nebraska. Applied currently employs 800 people throughout the U.S.

Mr. Menzies stated, "I have been pleased to have had Berkshire as a partner these many years, but the growth in Berkshire's other primary insurance operations has created increasing channel conflicts for Applied. The transaction will now allow Applied to expand with no concerns for channel conflicts." Mr. Menzies added, "The future for Applied is very bright, as construction on our new Omaha operations center at Heartwood Preserve proceeds apace and as our financial results deliver consistent profits and excellent coverage for our clients and their employees."

Mr. Alan Quasha, CEO of Quadrant Management, which has acquired the services companies of Applied, observed that the complementary relationship between the insurance and services companies will be increasingly meaningful in the future as new products and programs are developed and introduced. Mr. Quasha stated, "The combination of strengths that our experience and our enterprises bring to Applied will foster robust organic growth, as has long been Steve Menzies' approach in making Applied a national leader, and our methods of continuously improving the companies with which we are involved. We are both fully committed, motivated, and even inspired by the new Applied formula which can be realized," he said.

Applied Underwriters, Inc. is a national leader in the provision of workers' compensation insurance, other lines of commercial insurance, and risk transfer and financing plans. Founded in 1994 by Steve Menzies, the Company moved its operations to Omaha in 1999. In 2005, Berkshire Hathaway took an interest in the Company and acquired an 81% share.

Today, Applied's two principal complementary divisions, primary insurance carriers and its business services group, serve hundreds of thousands of businesses and their employees across the United States.

For information contact Debbie Hill, EG Integrated at 402 350 5222 or email: debbie@egintegrated.com.

Exhibit 9

1 CYNTHIA J. LARSEN (STATE BAR NO. 123994)
clarsen@orrick.com
2 JUSTIN GIOVANNETTONE (STATE BAR NO. 293794)
jgiovannettone@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
4 Sacramento, CA 95814-4497
Telephone: +1 916 447 9200
5 Facsimile: +1 916 329 4900

6 Attorneys for Insurance Commissioner
in his capacity as Conservator of
7 California Insurance Company

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 APPLIED UNDERWRITERS, INC., a
12 Nebraska corporation,

13 Plaintiff,

14 v.

15 O'CONNELL LANDSCAPE
16 MAINTENANCE, INC., a California
corporation.

17 Defendant.

Case No. 8:20-cv-00441-DOC (ADSx)

**BRIEF OF AMICUS CURIAE THE
CALIFORNIA INSURANCE
COMMISSIONER REGARDING
DEFENDANT'S MOTION TO JOIN
THIRD PARTIES IN A CROSS-
COMPLAINT OR TO STAY THE
ACTION**

Date: July 27, 2020
Time: 8:30 a.m.
Dept: 9D

19
20 **BRIEF OF AMICUS CURIAE**
THE CALIFORNIA INSURANCE COMMISSIONER

21 This Amicus Curiae brief is respectfully submitted by the Insurance Commissioner of the
22 State of California ("Commissioner"), acting in his capacity as statutory Conservator of
23 California Insurance Company ("CIC"), in response to Defendant O'Connell Landscape
24 Maintenance, Inc.'s Motion to Join Third Parties in a Cross-Complaint or to Stay the Action
25 ("Motion"), ECF No. 26.

26 The Commissioner urges the Court to stay this case. As the parties have informed the
27 Court, on November 4, 2019, the Superior Court for San Mateo County ("Conservation Court")
28

1 placed Plaintiff Applied Underwriters, Inc.’s (“AUI’s”) affiliate, CIC, into conservation and
2 appointed the Commissioner as statutory Conservator of CIC pursuant to California Insurance
3 Code sections 1010, *et seq.* Order Appointing Insurance Commissioner and Restraining Orders,
4 ECF No. 16, Ex. A (“Conservation Order”). Paragraph 17 of the Conservation Order also
5 enjoined “all persons . . . from instituting, prosecuting, or maintaining any action at law . . .
6 against CIC . . . and from doing any act interfering with [the Conservator’s] business” of
7 conserving CIC. *Id.*, ¶17. The Court should stay this case because, if Defendant is permitted to
8 join CIC the action will be “against CIC” and, if Defendant is not permitted to join CIC, it would
9 still impact CIC’s interests and interfere with the ongoing conservation.

10 As Defendant’s moving papers and Answer make clear, its contemplated counterclaims
11 and defenses relate directly to AUI’s sale, together with its affiliates CIC and Applied
12 Underwriters Captive Risk Assurance Company, Inc (“AUCRA”), of an insurance product
13 declared illegal by the Commissioner. Def.’s Reply to Opp’n, ECF No. 30, at 5-6; Def’s Answer,
14 ECF No. 27, 2:3-4; *In Matter of Shasta Linen Supply, Inc.*, Cal. Ins. Comm’r, No. AHB-WCA-
15 14-31 (June 22, 2016) (finding that “CIC’s EquityComp program and the accompanying RPA
16 constitute a collateral agreement pursuant to California Code of Regulations, title 10, section
17 2268, and CIC’s failure to file and secure approval of EquityComp and the RPA, in violation of
18 Insurance Code section 11658, renders the RPA void as a matter of law.”). Thus, Defendant’s
19 contemplated counterclaims would directly implicate the Conservation Court’s injunction because
20 they would be “against CIC.” *See* Def.’s Reply to Opp’n, ECF No. 30, 5:27-6:1 (discussing
21 Defendant’s potential counterclaims [referred to in the Reply as “cross-claims”], including that
22 “Defendant is entitled to recover from CIC the excess amount paid under the program”). As
23 such, if the Court permits these counterclaims, the case should be stayed immediately afterward
24 pursuant to paragraph 17 of the Conservation Order.

25 If the Court denies Defendant’s Motion and allows the case to proceed without CIC, the
26 Court should still stay this case until the conservation is resolved because Defendant’s primary
27 defense would necessarily involve CIC, potentially subject it to discovery, and interfere with the
28 ongoing conservation and rehabilitation of CIC. The primary defense asserted by Defendant—

1 that the underlying policy (called “EquityComp”) that led to the promissory note under which
2 Defendant is being sued is illegal—would still necessarily involve CIC, because CIC issued that
3 policy to Defendant. Def’s Answer, ECF No. 27, 2:3-4 (asserting as Defendant’s First
4 Affirmative Defense to Plaintiff’s claim for breach of contract that the claim is barred for
5 illegality); *Shasta Linen*, at 26-31 (finding that AUI generated the marketing material used to
6 convince insureds to purchase the illegal insurance product and CIC issued the underlying
7 guaranteed-cost policy associated with the program). Since CIC issued the EquityComp policy
8 that is the focus of Defendant’s primary affirmative defense, CIC would likely be subject to
9 discovery requests and its interests would necessarily be impacted if the case were to proceed
10 against its affiliate AUI. As the Commissioner determined in *Shasta Linen* and numerous other
11 courts have reiterated, AUI, AUCRA, and CIC effectively operate as a single entity. *Shasta*
12 *Linen*, at 49; *Nielsen Contracting, Inc. v. Applied Underwriters, Inc.*, 22 Cal. App. 5th 1096,
13 1113-16 (2018) (holding that record on appeal supported conclusion that AUI, AUCRA, and CIC
14 should be considered together because they were so enmeshed and intertwined); *Luxor Cabs, Inc.*
15 *v. Applied Underwriters Captive Risk Assurance Co. et al*, 30 Cal. App. 5th 970, 986 (2018)
16 (same).

17 Counsel for the Conservator has appeared in numerous cases throughout California
18 involving CIC, its affiliates, and their sale of the EquityComp policy, in order to ensure the
19 injunction imposed by paragraph 17 of the Conservation Order is enforced. At least 32 of these
20 matters have been stayed in their entirety via a published order and counsel for the Conservator is
21 not aware of any cases in California where a court, administrative law judge, or arbitrator has
22 allowed a case against CIC’s parent or affiliates to proceed while the Conservation is pending.
23 Declaration of Cynthia Larsen (Larsen Decl.), ¶ 6. The Conservator’s intent in ensuring these
24 cases are uniformly stayed is to ensure equitable treatment among litigants (both Applied-
25 affiliated entities and policyholders) and maintain the status quo in all cases involving the
26 EquityComp program, while the Conservator works towards a rehabilitation plan for CIC that
27 will, among other things, attempt to resolve many or all of these suits. *Id.* at ¶ 7. Therefore, it
28 has been the Commissioner’s position that allowing cases involving the EquityComp policy—
including this one—to go forward would necessarily interfere with these efforts by the

1 Conservator. As such, even if Defendant’s Motion is denied, the Court should stay this action to
2 preserve the status quo and ensure equity amongst all litigants during the conservation
3 proceedings.

4 For these reasons, the Court should stay this action either before or immediately after
5 ruling on the Motion until the conservation is dissolved.

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Dated: July 21, 2020

CYNTHIA J. LARSEN
JUSTIN GIOVANNETTONE
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Cynthia J. Larsen
CYNTHIA J. LARSEN
Attorneys for Insurance Commissioner
in his capacity as Conservator of
California Insurance Company

4159-0115-4085

Exhibit 10

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 20-00441-DOC-ADS

Date: September 10, 2020

Title: APPLIED UNDERWRITERS, INC. v. O’CONNELL LANDSCAPE
MAINTENANCE, INC.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Kelly Davis
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR
DEFENDANT:
None Present

PROCEEDINGS (IN CHAMBERS): ORDER STAYING CASE

Before the Court is Defendant O’Connell Landscape Maintenance, Inc.’s (“Defendant”) Motion to Join Third Parties in a Cross-Complaint or to Stay the Action (“Motion”) (Dkt. 26). The Court finds this matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78; C.D. Cal. R. 7-15. Having reviewed the moving papers submitted by the parties, the Court now STAYS the case.

On November 4, 2019, the San Mateo County Superior Court placed California Insurance Company (“CIC”)—an affiliate of Plaintiff Applied Underwriters, Inc. (“Plaintiff”)—into conservation, and appointed the Insurance Commissioner of the State of California (the “Commissioner”) as the conservator of CIC, pursuant to the California Insurance Code. The Superior Court’s Order Appointing Insurance Commissioner as Conservator and Restraining Orders (“Superior Court Order”) (Dkt. 16, Ex. A) provides, in relevant part, as follows:

17. All persons are enjoined, except upon the written consent of the [Commissioner], from instituting, prosecuting, or maintaining any action at law . . . against CIC . . . and from doing any act

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 20-00441-DOC-ADS

Date: September 10, 2020

Page 2

interfering with the conduct of [the Commissioner’s] business, except after an order of this Court obtained after reasonable notice to the [Commissioner].

Superior Court Order ¶ 17.

In his Brief of Amicus Curiae (“Amicus Brief”), the Commissioner argues that if Defendant is permitted to join CIC as a counter-defendant, the action will be “against” CIC; and, even if CIC is not joined as a counter-defendant, this action would still impact CIC’s interests and interfere with the Commissioner’s conservation of CIC. Amicus Br. at 2. Either result would contravene the Superior Court Order.

Therefore, out of respect for the Superior Court’s proper parallel jurisdiction, and so as not to interfere with the Commissioner’s conservatorship, the Court hereby STAYS the instant case.

To enable the Court to timely lift the stay on this action, the parties shall file a joint status report within 30 days of the end of the Commissioner’s conservatorship over CIC.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11

Initials of Deputy Clerk: kd

CIVIL-GEN