

June 12, 2024

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Sent via electronic submission

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RE: APCIA Interested Party Response to Consumer Watchdog’s June 3, 2024 Request for Finding of Eligibility for Compensation

Dear Mr. Phenix, Mr. Wu, Ms. Warren, and Ms. Gomez:

The American Property Casualty Insurance Association (APCIA)¹ submits this Response urging the California Department of Insurance (CDI) and the Public Advisor (PA) to find that Consumer Watchdog’s *Request for Finding of Eligibility for Compensation* submitted on June 3, 2024 (the CW Request) is not complete pursuant to the requirements set forth in 10 CCR section 2662.2(a)(2)(A)-(G). The CW Request lacks sufficient substantive detail to support the conclusory statements set forth therein and fails to adequately demonstrate that Consumer Watchdog represents the interests of consumers.

The CDI has acknowledged the need for more transparency in the Intervenor process. “Similar to publicly accessible information regarding insurance companies, information regarding intervenors is important to ensure that all participants in the rate application process are complying with applicable statutes and regulations.” (CDI *Notice to Interested Parties, 6-6-2024*) The CW Request in its current form does not provide the transparency necessary for the CDI and PA to make an informed decision about whether the activities of Consumer Watchdog genuinely benefit the interests of consumers.

California Insurance Code [1861.10](#) (which authorizes consumer participation in the intervenor process) provides for the award of “. . . **reasonable** advocacy, and witness fees and expenses to any person who **demonstrates** that

¹ APCIA is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

1) **the person represents the interests of consumers** and 2) that he or she has made a **substantial contribution** to the adoption of any order regulation or decision by the commissioner or a court. [emphasis added]

The requirements for obtaining a finding of eligibility to seek compensation are set forth in [CCR 10 -2662.2](#). This section incorporates the “good faith” standard found in [CCR 10-2654](#).

To start, 2662.2 (a) provides that a person or group representing the interest of consumers may submit a request for a finding of eligibility to seek compensation. It is not enough for an individual or entity to assert that s/he or it represents the interests of consumers. A request must be submitted for review so that there can be a determination of whether the requestor, in fact, represents the interests of consumers.

Section 2662.2(a)(1) requires evidence from the requestor that it represents the interest of consumers, including a description of the intervenor or participant’s previous work².

Section 2662.2(a)(2) lists several exhibits that must be included with a *Request for Finding of Eligibility to Seek Compensation* for the request to be considered complete.

- (A) a copy of the group's articles of incorporation, by-laws, or (for groups not organized as corporations) other organizational documents,
- (B) if the group has members, the approximate number of current members,
- (C) composition of the group's current Board of Directors -- including the name and business address of each director and/or the name and business address of the principals of the group if it is not a corporation,
- (D) newsletter circulation, if any, along with a representative sample of newsletters and/or any other publications issued by the intervenor in California during the previous twelve (12) months,
- (E) any annual or year-end report for the prior year,
- (F) a statement as to whether or not the group has been granted non-profit status under Internal Revenue Code Section 501(c), and
- (G) In order to allow a determination whether the group actually does represent the interests of consumers, a listing, by general category, of the group's funding sources for the prior twenty-four (24) months and the approximate total percentage of the group's annual budget from each funding category. Each foundation, corporate, business, or government grant shall be separately listed by name of foundation, corporation, business, or government agency and amount of grant. For each individual who contributed at least five percent of the group's annual budget, the name of the individual and the total amount of the annual contribution shall be separately listed.

For purposes of this response, APCIA submits that the CW Request is incomplete as it fails to comply with substance of the requirements set forth in CCR 2662.2(a)(1) and 2662(a)(2), subparagraphs (B), (E), and (G),

In paragraph 3 of the CW Request, Consumer Watchdog asserts, in part, that: “[o]ther than the interests of consumers, Consumer Watchdog represents no other interests.” Yet, in Exhibit E to the CW Request, Consumer

² The phrase “represents the interests of consumers” is defined in relevant part at [CCR 2661.1 \(j\)](#) to mean “. . . **t**hat the intervenor **represents the interests of individual insurance consumer[s]**, or the intervenor is a group organized for the purpose of consumer protection as **demonstrated by**, but is not limited to, a history of **representing consumers** in administrative, legislative or judicial proceedings. . . . [emphasis added.]

Watchdog asserts that 42.46³ of its own \$6,000,000+ budget funding comes from fees awarded under the fee-generating mechanism written into the Intervenor process in Proposition 103 by its author, Harvey Rosenfield, founder of Consumer Watchdog.

In paragraph 7 of the CW Request, Consumer Watchdog lists numerous previous proceedings in which it has engaged as intervenor. Yet, it fails to provide any detail to demonstrate that its engagement resulted in a substantial contribution benefiting consumers⁴. [CCR 2661.1\(k\)](#) defines “substantial contribution” To mean that “. . . the intervenor substantially contributed, as a whole, to a decision, order, regulation, or other action of the Commissioner by presenting relevant issues, evidence, or arguments which were separate and distinct from those emphasized by the Department of Insurance staff or any other party, such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being available for the Commissioner to make the Commissioner's decision than would have been available to a Commissioner had the intervenor not participated. A substantial contribution may be demonstrated without regard to whether a petition for hearing is granted or denied.” A list of prior proceedings and a detailed history of engagement in the process provides no qualitative basis to support Consumer Watchdog’s request that it be found eligible to seek compensation.

Paragraph 8 of the CW Request asserts, in relevant part, that “Consumer Watchdog’s interventions in rate proceedings before the Department of Insurance have resulted in over \$6 billion in premium savings for consumers since 2002. The Request cites one of Consumer Watchdog’s own publications as support for this representation - a chart found at <https://consumerwatchdog.org/wp-content/uploads/2024/05/Prop103-SavingsAndFees-Chart5.17.24.pdf>. The referenced chart merely lists 123 insurance company names with dollar amounts that purportedly correspond to premium dollar savings resulting from Consumer Watchdog’s intervention in rate application proceedings.

The chart rests on several flawed assumptions:

- assumes intervention in a rate proceeding always benefits consumers, without accounting for delays, added costs to the system, and resulting market deterioration
- assumes it is always better for rates to be approved at amounts lower than requested without regard to insurer solvency and the impact that inadequate rate can have on insurance availability.
- assumes Consumer Watchdog should be credited with 100% of the difference between requested rate and approved rate as “premium savings;” completely disregarding any impact on rate resulting from CDI’s rate review/evaluation.⁵

³ APCA submits that this figure is substantially higher. In a footnote to Exhibit E, Consumer Watchdog acknowledges that this amount has been understated by the amounts attributable to and paid to outside counsel and experts, without disclosing the actual figures.

⁴ A June 21, 2023 ALJ [Decision](#) denying compensation to Consumer Watchdog in *In the Matter of the Rate Application of Interinsurance Exchange of the Automobile Club* outlines the type of qualitative analysis needed to determine whether an intervenor has made a substantial contribution to a rate filing proceeding. NOTE: Although Consumer Watchdog was specifically denied compensation for participation in *In the Matter of the Rate Application of Interinsurance Exchange of the Automobile Club*, the case is included in the list presented by Consumer Watchdog as evidence that it represents the interests of consumers.

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For the reasons set forth above, APCIA urges the CDI and PA to find that the CW Request is not complete pursuant to the requirements set forth in 10 CCR section 2662.2(a)(2)(A)-(G).

APCIA appreciates the opportunity to submit this response.

Please contact me directly at 209.968.9107 or via email at denneile.ritter@apci.org with any questions.

Sincerely,

A handwritten signature in black ink that reads "Denni Ritter". The signature is written in a cursive, flowing style.

Denni Ritter
Department Vice President, State Government Relations
American Property Casualty Insurance Association (APCIA)
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