

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE FOUNDATION FOR TAXPAYER
AND CONSUMER RIGHTS et al.,

Plaintiffs and Respondents,

v.

JOHN GARAMENDI, as Insurance
Commissioner, etc., et al.,

Defendant and Respondent;

STATE OF CALIFORNIA,

Defendant and Appellant;

MERCURY INSURANCE GROUP et al.,

Interveners and Appellants;

SAM DONABEDIAN,

Intervener and Respondent.

B173987

(Los Angeles County
Super. Ct. No. BS 086235)

ORDER MODIFYING OPINION

NO CHANGE IN JUDGMENT

THE COURT:*

The opinion herein, filed on September 27, 2005, is modified as follows:

1. On page 5, in the last paragraph, first sentence, delete the words “the Department of Insurance, under Commissioner John Garamendi” and replace with “Commissioner Low” so that the sentence begins:

In August 2002, Commissioner Low adopted the proposed regulation, . . .

2. On page 18, in the last paragraph, delete the citation to “*Walker v. Allstate Indemnity Co.* (2000) 77 Cal.App.4th 750, 756 (*Walker*)” and the semicolon preceding it.

3. On page 19, delete the second paragraph, which starts “The voters vested in the Insurance Commissioner,” in its entirety.

4. On page 19, in the last paragraph, starting six lines down, delete the words “Under Commissioner Garamendi, the Department of Insurance” and replace them with “Commissioner Low,” so that the sentence begins:

Commissioner Low adopted the regulation on persistency that provides an insurer

5. On page 19, in the last paragraph, add the following sentence after the citation to “(Cal. Code Regs., tit. 10, § 2632.5, subd. (d)(11)(B).)”:

Commissioner Garamendi concurred in this interpretation of Proposition 103, as noted in this litigation.

6. On page 20, delete the third paragraph, which starts “We are also not persuaded,” in its entirety.

There is no change in the judgment.

* COOPER, P.J.

RUBIN, J.

FLIER, J.