

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE : November 21, 2005
JUDGE : Raymond M. Cadei
REPORTER : None

DEPT. NO : 25
CLERK : T. Brown
BAILIFF : None

PRESENT:

CALIFORNIA LAND TITLE ASSOCIATION,
Petitioners and Plaintiffs,

VS. Case No.: 05CS01406

JOHN GARAMENDI, in his capacity as
Commissioner of the California Department of
Insurance; CALIFORNIA DEPARTMENT OF
INSURANCE,
Respondents and Defendants.

WORKING COPY
11/23/05

Nature of Proceedings: PETITION FOR WRIT OF MANDATE
FINAL RULING ON SUBMITTED MATTER

This matter came on regularly for hearing on the petition for writ of mandate on Friday, November 18, 2005. Gene Livingston and Kathryn Doi appeared as counsel on behalf of petitioner California Land Title Association. Deputy Attorney General Michael J. Cornez appeared on behalf of respondents. The Court heard oral argument by counsel and took the matter under submission.

Having considered the points and authorities and oral arguments of counsel as well as the documentary evidence submitted by the parties, the Court now rules on the petition, as follows:

The petition for writ of mandate is denied. The Court finds that respondent's "data calls" were within the scope of its statutory authority under Insurance Code section 12414.22.

The statute permits respondent to examine the "officers, managers, agents, and employees of any advisory organization, title insurer, underwritten title company...at any time under oath" and to require them to "exhibit all books, records, accounts, documents, or agreements governing their method of operation, together with all data, statistics, and information of every kind and character collected or considered by such persons or entities in the conduct of the operations to which such examination relates". (Emphasis supplied.) The Court finds that the statute gives respondent a broad power to require regulated business entities to provide or make available to respondent, upon request, virtually any information relevant to their regulated business activities.

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BY: Tony Brown, Tony Brea
Deputy Clerk

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Petitioner has not demonstrated that any of the information sought in the "data calls" falls outside the scope of "data, statistics, and information" that its members would be required to "exhibit" under the statute. To the contrary, all of the information sought in the "data calls" appears to the Court to be reasonably related to the conduct of the regulated business activities of respondent's members and thus within the reach of respondent's statutory authority.

Petitioner further has not demonstrated that the use of the term "exhibit" in the statute precludes respondent from issuing "data calls" that require petitioner's members to search their business records to assemble "data, statistics and information" and collate them into a particular form. Petitioner contends that respondent's power under the statute is limited to sending an examiner to a regulated business entity's place of business to inspect business records, and that the obligation of its members is limited to making records available for such inspection. This contention is unpersuasive. There is no statutory definition of the term "exhibit" that limits its meaning in the manner petitioner proposes. Nor does a common-sense interpretation of the term "exhibit", when used in connection with concepts such as data, statistics and information, necessarily require such a limitation. One can "exhibit" data, statistics and information just as much by extracting them from business records, compiling them according to certain requests, and entering them onto a form, as by merely holding out a piece of paper or a file for inspection.

Petitioner's contention seems to be based upon the assumption that the concept of "data, statistics and information" is functionally equivalent to the concept of a physical document, and that respondent may seek the former only to the extent it is embodied in the latter. This view finds no support in the applicable statutes. Moreover, it is not in harmony with a practical view of how the examination process works. Under Insurance Code section 12414.23, petitioner's members are required to pay the reasonable cost of any examination. Thus, as petitioner concedes, the statutes fully authorize respondent to send an examiner (or a team of examiners) to a regulated entity's place of business to go through all relevant business records, seek out data from those records, and then assemble that data into any format that seems necessary, charging the full reasonable cost of such effort to the regulated entity. It seems illogical to conclude that respondent may require a regulated entity to pay the cost of finding and assembling data, but may not require that entity to do the work itself, particularly since the latter option often may result in a lower cost to the entity.

The Court similarly is not persuaded by petitioner's contention that respondent's power to require regulated entities to produce information is limited by regulation. Neither 10 C.C.R. sections 2556(a) nor 2556.2 limits or restricts respondent's powers under Insurance Code section 12414.23. The former

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regulation requires regulated entities to maintain certain types of records but does not, expressly or by implication, require respondent to seek relevant "data, statistics, and information" only in the format of those records. The latter regulation restates respondent's statutory examination powers and provides examples of matters such an examination "may include". The Court finds no basis upon which to interpret this permissive description of respondent's examination powers as a substantive limitation precluding the kind of "data calls" involved here.

The Court also is not persuaded by petitioner's contention that the "data calls" in this case represent an improper underground regulation. The "data calls" do not have the essential character of a regulation, which is to establish rules applicable to future conduct or cases. Instead, the "data calls" represent the exercise of respondent's authority under governing statutes. As the Court has found above, the "data calls" were fully authorized by statute. No particular regulation was required to describe the procedures respondent must follow in seeking data or to provide further authorization for it to do so. The "data calls" therefore do not, themselves, represent any kind of regulation, underground or otherwise.

Finally, petitioner argues that that "data calls" are improper because they seek information that not all of its members maintain, or that they cannot assemble and format at a reasonable cost, and that certain of its members therefore may be subjected to unfair punitive action on the ground that they have failed to respond as required. The Court finds this claim to be premature. Based on the limited record before the Court, it appears that respondent is not taking an inflexible or unrealistic approach to this matter. For example, respondent already has stated publicly that it will not require production of data, statistics, or information that do not exist. The Court therefore cannot find, at this stage of the proceedings, that any particular member of petitioner will be subjected to unreasonable costs or arbitrary punitive action. Such a conclusion would be little more than speculation at this point. Moreover, if such adverse action occurs with regard to any individual regulated entity, an administrative process is available, and is the proper forum in which to address it. The administrative process also would provide the Court with findings and a record upon which to base its review the propriety of any such action. The mere possibility of adverse action against some entities in the future, based on a speculative set of facts, does not provide a basis for invalidating the "data calls" at this time.

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The petition for writ of mandate accordingly is denied. Counsel for respondent is directed to prepare the formal order and judgment denying the petition in accordance with the procedure set forth in Rule of Court 391.

Dated: *11/22/05*


Honorable Raymond M. Cadei,
Judge of the Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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Dated:

Superior Court of California,
County of Sacramento

By: Tony Brown, *Tony Brown*
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