

SUPREME COURT COPY

S232322

SUPREME COURT
FILED

OCT 03 2017

Jorge Navarrete Clerk

IN THE
SUPREME COURT
OF THE STATE OF CALIFORNIA

Deputy

SAMUEL HECKART,

Plaintiff & Appellant,

vs.

A-1 SELF STORAGE, INC. *et al.*

Defendants & Respondents.

AFTER A DECISION BY COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIV. ONE,
APPEAL NO. D066831, APPEAL FROM JUDGMENT OF THE SAN DIEGO COUNTY SUPERIOR
COURT; CASE NO. 37-2013-00042315 CU-BT-CTL, HON. JOHN S. MEYER

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF DEANS
& HOMER'S ANSWER TO AMICUS CURIAE BRIEF OF
INSURANCE COMMISSIONER OF THE STATE OF
CALIFORNIA; SUPPORTING DECLARATION OF SCOTT
LANCASTER AND EXHIBITS 1-2**

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Attorney for Defendant & Respondent
DEANS & HOMER

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Attorney for Defendant & Respondent
DEANS & HOMER

MOTION FOR JUDICIAL NOTICE

PLEASE TAKE NOTICE that pursuant to California Rules of Court, rules 8.252 and 8.520(g) and Evidence Code sections 452(c) and 459(a), Respondent Deans & Homer respectfully requests that the Court take judicial notice of the following documents, which are attached as Motion for Judicial Notice (“MJN”) Exhibits 1 and 2 to the supporting Declaration of Scott Lancaster, filed with this request:

MJN Exhibit 1: Materials filed on behalf of Deans & Homer with the California Department of Insurance in September 2003, and stamped as received by that entity, along with the Department of Insurance’s subsequent approval.

MJN Exhibit 2: Materials filed on behalf of Deans & Homer with the California Department of Insurance in 2014, through the Department’s online filing system, along with the Department of Insurance’s subsequent approval.

These documents are the proper subject of judicial notice under California Evidence Code section 452(c), as a court may take judicial notice of records of a state agency. (*See* Cal. Evid. Code § 452(c); *Associated Builders & Contractors, Inc. v. San Francisco Airports Comm'n* (1999) 21 Cal.4th 352, 375, fn. 4 [applying this statutory provision to transcript of public hearings before San Francisco Airports Commission]; *Chas. L. Harney, Inc. v. State of California* (1963) 217 Cal.App.2d 77, 85–

86 [taking judicial notice of records of California State Board of Control and office of the State Controller; collecting cases].)¹

MJN Exhibits 1 and 2 were not presented to the trial court or to the court of appeal because their relevance arises in response to the amicus curiae brief filed by the California Department of Insurance with this Court, and the supporting custodian of records declaration filed by the Department of Insurance.

The Department of Insurance argues the prior approval of the Deans & Homer program at issue in this case by the Department of Insurance in 2003 and 2008 should not be given deference, and seeks to minimize the importance of the approvals because, among other things, the approval letters were issued by a single staff member. (DOI Amicus Brief at 18 n.3. The Department of Insurance also asserts that there is no evidence in its files of any materials reviewed by the Department of Insurance in connection with Deans & Homer's program before issuing the 2003 and 2008 approval letters. (DOI Amicus Brief at 11-12; Declaration of Custodian of Records Lynell N. Wise ¶ 6.)

Deans & Homer contends that MJN Exhibits 1 and 2 are relevant to show that Deans & Homer's program was not just presented to a single staff member at the Department of Insurance, but rather also was presented on two other occasions to a different department within the Department of Insurance. Exhibits 1 and 2 show that in each instance, the Department of Insurance granted approval to Deans & Homer's application. Although the Department of Insurance now claims the program at issue constitutes the

¹ The documents submitted with this motion “were not presented to the trial court.” (Cal. Rules of Court, rule 8.252(a)(2)(B).) They do not “relate[] to proceedings occurring after the ... judgment that is the subject of the appeal.” (Rule 8.252(a)(2)(D).)

unlicensed sale of insurance, Exhibits 1 and 2 assist in demonstrating Deans & Homer informed multiple offices within the Department of Insurance of the program, and sought appropriate approval for it, since 2003.


Deans & Homer further asserts that MJN Exhibits 1 and 2 are relevant to show the legal interpretation the Department of Insurance provides in its amicus brief is not entitled to deference. This Court has stated that a vacillating agency interpretation is not entitled to deference. (*Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13.) Deans & Homer presented its program for providing coverage to self-storage facilities to the Department of Insurance for approval on four separate occasions, and received the Department of Insurance's approval in each instance. The Department of Insurance's inconsistent interpretation of the law that it provides in its amicus brief is a vacillating interpretation, contrary to the Department of Insurance's prior consistent and long-standing view, as demonstrated in part by Exhibits 1 and 2, and the Department of Insurance's current interpretation thus should not be accorded deference.

Finally, Deans & Homer contends that MJN Exhibits 1 and 2 are relevant, in light of the Department of Insurance's amicus brief, to show that it would be unfair to Deans & Homer, and would constitute a denial of due process, to apply the Department of Insurance's current interpretation of the law against Deans & Homer. Because Deans & Homer directly or indirectly presented its program to the Department of Insurance on four separate occasions and in response, received approval from the Department each time, Deans & Homer should not be liable based on an unexpected new and inconsistent interpretation of the law.

For the foregoing reasons, Deans & Homer respectfully requests that the Court take judicial notice of MJN Exhibits 1 and 2 to the supporting declaration of Scott Lancaster.

DATED: October 2, 2017

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP

By 
John R. Clifford
David J. Aveni
Attorneys for Defendant &
Respondent DEANS & HOMER

DECLARATION OF SCOTT LANCASTER

I, Scott Lancaster, declare as follows:

1. I serve as the Compliance Officer for Respondent Deans & Homer. I have been in that position since 2001. I am personally familiar with the facts set forth in this declaration. If called as a witness to testify in this action, I could and would testify competently to these facts.

2. Deans & Homer is a general agent for QBE Insurance Corporation, which is the insurance company that issued the Storage Operator's Contract Liability Policy Deans & Homer sold to Respondent A-1 Self Storage, Inc.


3. In September, 2003, subsequent to being informed that the Senior Staff Counsel of the Legal Division of the Compliance Bureau of the California Department of Insurance opined that the alternative lease program contracts were not insurance contracts subject to regulation and in reliance on that opinion, I directed Deans & Homer's application for a new program for insurance, called the Storage Operators Contract Liability Program, with the California Department of Insurance. Through this filing, Deans & Homer sought the Department of Insurance's approval, which is required under California law, for the Storage Operator's Contract Liability Policy to be sold to self-storage operators. Deans & Homer utilized the services of Perr & Knight, an actuarial consulting and rate filing firm that

was hired by Deans & Homer to assist with the September 2003 filing with the Department of Insurance.

4. Attached as Motion for Judicial Notice Exhibit 1 is a true and correct copy of pertinent materials from the September 2003 filing, including the Department of Insurance's approval of the program on November 6, 2003.

5. In 2014, I directed Deans & Homer's Compliance Department to file an application with the California Department of Insurance for a revision to the Storage Operators Contract Liability Program. Attached as Motion for Judicial Notice Exhibit 2 is a true and correct copy of pertinent materials from the 2014 filing, including the Department of Insurance's approval.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this twenty-first day of September, 2017, at San Francisco, California.



Scott Lancaster

PROOF OF SERVICE

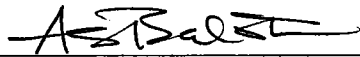
Samuel Heckart v. A-1 Self Storage, Inc., et al.
Supreme Court of California, Case No. S232322
Court of Appeal, Fourth Appellate District, Div. One, Case No. D066831
San Diego Superior Court Case No. 37-2013-00042315-CU-BT-CTL

I, the undersigned, declare as follows: I am employed with the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker LLP, whose address is 401 West A Street, Suite 1900, San Diego, California 92101. I am over the age of eighteen years, and am not a party to this action. On **October 2, 2017**, I served the foregoing documents described as:

**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF DEANS
& HOMER’S ANSWER TO AMICUS CURIAE BRIEF OF
INSURANCE COMMISSIONER OF THE STATE OF
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[X] OVERNIGHT MAIL - As follows: I am “readily familiar” with the firm’s practice of processing documents for mailing overnight via Federal Express. Under that practice it would be deposited in a Federal Express drop box, indicating overnight delivery, with delivery fees provided for, on that same day, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Angela Balistreri

SERVICE LIST

<p>Attorneys for Plaintiff Samuel Heckart</p> <p>Jeffrey R. Krinsk, Esq. Mark L. Knutson, Esq. William R. Restis, Esq. Trenton R. Kashima, Esq. Finkelstein Krinsk, LLP 550 West C Street, Suite 1760 San Diego, CA 92101 Tel: (619) 238-1333 Fax: (619) 238-5425</p>	<p>Attorneys for A-1 Self Storage, Inc., Caster Group LP, Caster Properties, Inc. and Caster Family Enterprises, Inc.</p> <p>John T. Brooks, Esq. Jessica L. Mackaness, Esq. Sheppard, Mullin, Richter & Hampton LLP 501 West Broadway, 19th Floor San Diego, CA 92101-3598 Tel: (619) 338-6500 Fax: (619) 234-3815</p>
<p>Attorneys for The People of the State of California – Notification as per Bus. & Prof. Code Sec. 17209</p> <p>Office of the Attorney General 600 West Broadway Street Suite 1800 San Diego, CA 92101-3702</p>	<p>Attorneys for The People of the State of California – Notification as per Bus. & Prof. Code Sec. 17209</p> <p>Office of the District Attorney Appellate Division 330 West Broadway, 8th Floor San Diego, CA 92101</p>
<p>Court of Appeals Fourth District, Division One 750 B Street, Suite 300 San Diego, CA 92101</p>	<p>Supreme Court of California 350 McAllister Street San Francisco, CA 94102-7303</p>
<p>Superior Court of California Appeal Court Division 3rd Floor, Room 3005 220 West Broadway San Diego, CA 92101</p>	<p>San Diego Superior Court Attn: John S. Meyer 330 West Broadway, Dept. 61 San Diego, CA 92101</p>
<p>Brad N. Baker, Esq. Albro L. Lundy III, Esq. Baker, Burton & Lundy, PC 515 Pier Avenue Hermosa Beach, CA 90254 Tel: (310) 376-9893</p>	<p>Dale E. Washington, Esq. 5942 Edinger Avenue 113/1325 Huntington Beach, CA 92649 Tel: (714) 242-3868</p>

Raymond Zakari, Esq. Zakari Law 301 E. Colorado Blvd. Suite 407 Pasadena, CA 91101 Tel: (626) 793-7328	Charles A. Bird Dentons US LLP 4655 Executive Drive Suite 700 San Diego, CA 92121 Tel: (619) 236-1414
Xavier Becerra Diane S. Shaw Molly K. Mosley Office of the Attorney General 1300 I Street, Suite 125 Sacramento, CA 94244 Tel: (916) 210-7358	

Motion for Judicial Notice
EXHIBIT 1

Motion for Judicial Notice
EXHIBIT 1

Perr & Knight
INC
ACTUARIES CONSULTANTS

881 ALMA REAL DRIVE
SUITE 205
PACIFIC PALISADES, CA 90272

(310) 230-8339
FAX (310) 230-1061

WWW.PERRKNIGHT.COM

September 8, 2003

California Department of Insurance
Rate Regulation Division
Rate Filing Bureau - Filing Office
45 Fremont Street, 23rd Floor
San Francisco, CA 94105

RATE FILING BUREAU--SF
SEP 10 2003
STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

Re: QBE Insurance Corporation, NAIC#796-39217, FEIN# 22-2311816
Commercial Inland Marine Rate, Rule, and Form Filing
Storage Operators Contract Liability Program
Company Filing Number QBE-IM-CA-03-01

On behalf of QBE Insurance Corporation, we are filing a new program for Commercial Inland Marine called the *Storage Operators Contract Liability Program*. The program protects the storage operator for liabilities associated with claims under contracts with the individual renters of the storage facilities for loss or damage to personal property contained within the storage units. We believe this product is uncontrolled inland marine however due to the unique nature of the product, we are submitting this to you for your review and determination of appropriate filing action. Please see the enclosed filing memorandum for additional details.

We respectfully request that the proposed rates, rules and forms be implemented for all policies effective on and after the earliest possible date of approval.

Two additional copies of the filing and two self-addressed postage paid envelopes are provided for the Insurance Department's acknowledgement or approval.

Please do not hesitate to contact us if you have any questions.

Sincerely,



Emilie Petty
Senior State Filings Consultant
phone: (888) 201-5123 extension 219
fax: (310) 230-1061
e-mail: efetty@perrknight.com

Enclosures

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

Insurer's Name: QBE Insurance Corporation
Line of Business: Commercial Inland Marine

PROPERTY & LIABILITY FILING SUBMISSION DATA SHEET

*This application must be accurately completed and accompany each filing or modification. If this application is not properly completed, the filing will be **REJECTED**.*

The purpose of this filing is as follows: (More than one item may be marked).

	Pages & Documents Required
<input type="checkbox"/> Rates	
<input type="checkbox"/> Increase Rates	CA-RA1 through 8 plus Exhibits
<input type="checkbox"/> Decrease Rates	CA-RA1 through 8 plus Exhibits
<input type="checkbox"/> Zero Overall Rate Impact	CA-RA1 through 8 plus Exhibits
<input type="checkbox"/> Forms with Rate Impact	
<input type="checkbox"/> With Corresponding Rule Change	CA-RA1 through 8 plus Exhibits and CA-FA1 through 2
<input type="checkbox"/> Without Rule Change	CA-RA1, 2, 3, 4 and CA-FA1 & 2
<input type="checkbox"/> Manual Rules	CA-RA1, 2, 3, 4
<input type="checkbox"/> Rating Rules	CA-RA1 through 8 plus Exhibits
<input checked="" type="checkbox"/> New Program	CA-RA1, 2, 3, 4, 5, 8 plus Exhibit 23

All Private Passenger Automobile class plan filings must be filed separately from the Prior Approval rate application.

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

Insurer's Name: QBE Insurance Corporation
Line of Business: Commercial Inland Marine

LINE OF BUSINESS

This filing pertains to the following line of insurance: (Only one line and one subline should be checked.)

	LINE:	SUBLINE:
<input type="checkbox"/>	PERSONAL LINES:	(Only the following sublines should be designated.)
	<input type="checkbox"/> Fire	
	<input type="checkbox"/> Allied Lines	
	<input type="checkbox"/> Homeowners Multi-Peril	<u>Personal</u>
<input checked="" type="checkbox"/>	COMMERCIAL LINES:	
	<input type="checkbox"/> Commercial Multi-Peril	<input type="checkbox"/> Mobile Homeowners
	<input type="checkbox"/> Earthquake	<input type="checkbox"/> Motorcycle
	<input type="checkbox"/> Farmowners Multi-Peril	<input type="checkbox"/> Pleasure Boats
	<input checked="" type="checkbox"/> Inland Marine	<input type="checkbox"/> Umbrella/Excess Liability
	<input type="checkbox"/> Medical Malpractice	<input type="checkbox"/> Other (Please Specify) _____
	<input type="checkbox"/> Other Liability	
	<input type="checkbox"/> Auto Liability	<input type="checkbox"/> None
	<input type="checkbox"/> Auto Physical Damage	<u>Commercial</u>
	<input type="checkbox"/> Auto Lib. & PD	<input type="checkbox"/> Businessowners
	<input type="checkbox"/> Aircraft	<input type="checkbox"/> Liquor Liability
	<input type="checkbox"/> Glass	<input type="checkbox"/> Manufacturers & Contractors
	<input type="checkbox"/> Burglary & Theft	<input type="checkbox"/> Owners, Landlords, & Tenants
	<input type="checkbox"/> Boiler & Machinery	<input type="checkbox"/> Other Professional Liability
	<input type="checkbox"/> Fidelity	<input type="checkbox"/> Product Liability
	<input type="checkbox"/> Surety	<input type="checkbox"/> Special Multi-Peril
	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Umbrella/Excess
		<input checked="" type="checkbox"/> Other (Please Specify) _____

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

Insurer's Name: QBE Insurance Corporation
Line of Business: Commercial Inland Marine

FILING CHECKLIST

Use this checklist to assemble all documents to constitute a proper filing.

- Application for Approval (CA-RA1)
- Filing Memorandum (Include in all filings)
- Self-addressed, stamped envelope
- Submission Data Sheet (CA-RA2)
- Line of Business (CA-RA3)
- Filing Checklist (CA-RA4)
- Ratemaking Data (CA-RA5)
- Reconciliation Report (CA-RA6)
- Additional Data Required by Statute (CA-RA7)
- Miscellaneous Data (CA-RA8)

SUPPORTING DATA EXHIBITS

- Exhibit 1: Filing History
- Exhibit 2: Rate Level History
- Exhibit 3: Premium Adjustment Factor
- Exhibit 4: Premium Trend Factor
- Exhibit 5: Allocated Loss Adjustment Expense
- Exhibit 6: Loss Development Factors
- Exhibit 7: ALAE Development Factors
- Exhibit 8: Loss Trend, ALAE Trend, and Expense Trend

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

Insurer's Name: QBE Insurance Corporation
Line of Business: Commercial Inland Marine

SUPPORTING DATA EXHIBITS (CONT.)

- Exhibit 11: Credibility Adjustment
- Exhibit 12: Complementary Losses / Data Availability Report
- Exhibit 13: Projected Expenses / Interjurisdictional Expense Allocations
- Exhibit 14: Unallocated Loss Adjustment Expense
- Exhibit 15: Other Expense Items
- Exhibit 16: Ancillary Income
- Exhibit 17: Federal Income tax Rate
- Exhibit 18: Projected Investment Income Ratio
- Exhibit 19: Loss Reserves, Loss Adjustment Expense Reserves,
& Unearned Premium Reserves
- Exhibit 20: Insurer's Ratemaking Calculations
- Exhibit 21: Rate Distribution
- Exhibit 22: Rate Classification Relativities
- Exhibit 23: New Program
- Exhibit 24: Group Filing
- Exhibit 25: _____

See instructions on CA-IA2 and CA-IA3 regarding the following attachments:

- Printed Rate and Rule Manual Pages
- Underwriting Rules
- Forms (attach all independent forms and list all advisory organization forms).

QBE Insurance Corporation

Storage Operators Contract Liability Program

Commercial Inland Marine

Explanatory Memorandum

On behalf of QBE Insurance Corporation (the Company), we are filing to introduce a new program that provides contractual liability coverage for operators of storage facilities. The program protects the storage operator for liabilities associated with claims under contracts with the individual renters of the storage facilities for loss or damage to personal property contained within the storage units. The rates for this program are based on competitor comparison and judgment.

Exhibit 1 compares the current countrywide rates for the following companies: Republic Western, North River, and Connecticut Indemnity. These rates are based on the Self Storage rates at the \$100 deductible for each company's program. While the rates compared are for first party coverage, adjustments have been made (see Exhibit 2) in order to account for differences between the proposed program and the competitor programs.

Exhibit 2 makes adjustments to the Exhibit 1 rates in order to make them comparable to the Company's proposed program. Adjustments made include application of a factor to reflect a deductible of \$0 as well as an adjustment to the Republic Western rates to include 100% theft coverage.

Exhibit 3 makes a final adjustment to the competitor rates from Exhibit 2. The competitor rates are adjusted to reflect the expenses of the Company's proposed program by applying a factor equivalent to the ratio of the permissible loss ratios. Based on this adjustment, the Company's proposed rates have been compared and are in line with those of the competition. Exhibits 4 and 5 provide more detail regarding the historical expenses of the Company and the selected profit provision.

Coverage will be provided for Certified Terrorism losses under this program at no additional premium. This is an exception to any other rate filing for Certified Terrorism coverage for this line of business as such losses are expected to be nominal for this program.

STORAGE OPERATOR'S CONTRACT LIABILITY POLICY

RATE MANUAL

COMPANY: QBE Insurance Corporation

1. GENERAL PROGRAM DESCRIPTION

The Storage Operators' CPD Policy program is designed to provide insurance coverage to support or contain the liability assumed under the lease agreement by a self-storage facility owner or operator for loss or damage to personal property stored by the lessee (customer) at the storage facility. Self-storage operators are generally not legally liable for loss or damage to their customers' stored property. The operator generally does not have control of the stored property and bailment is not created in the typical self-storage rental transaction. This program is intended to allow the voluntary acceptance of liability by the operator. The actual terms and conditions of the contract between the owner (lessor) and the customer (lessee) are not pre-determined by this program. The operator is free to draft their contract and accept responsibility for loss or damage to stored property from such causes and occurrences as the operator believes to be appropriate for their level of tolerance for this business risk. This product provides a method of containing the loss exposure of this risk transfer by insuring the operator's liability for damage arising from certain causes of loss that have been identified as potentially catastrophic and which would otherwise prohibit the self-storage operation of accepting this risk on behalf of their customer.

2. ELIGIBILITY

For eligibility guidelines, refer to Underwriting Guidelines on file with the company.

3. TERRITORY

All U.S. states in which this manual has been filed.

4. COVERAGE

This policy will indemnify the insured self-storage facility owner or operator for liability assumed under a written rental agreement, lease, or addendum to lease for loss or damage to a customer's stored property. This policy will only indemnify the operator for liability assumed for property damage resulting from the causes of loss specifically described in the policy form. The policy language excludes liability for damage caused to certain types of property as described in the policy form. The operator may retain very little or a substantial portion of the risk of liability assumed under the rental agreement based upon the causes of damage for which the operator has assumed responsibility; by their acceptance or limitation of the types of property that they have accepted responsibility for; and by their selection of a deductible which represents a direct assumption of the financial risk of the damage to customer's stored property. However, the rate plan requires that operator place a dollar limit on their assumption of liability in the lease agreement that corresponds to the Limit(s) Per Storage Unit selected to be offered at the location.

5. DETERMINATION OF PREMIUM

This premium for this program is determined by the application of a rate to the risk exposure base, which is measured by the number of storage units that have entered a rental agreement that transfers the responsibility for loss or damage of stored property from the customer to the operator. All rates shown in the rate plan represent the monthly charge per exposure unit. The applicable rate charge(s) per location are determined as follows:

- A. Determine the applicable occurrence limit. This is the most that the company will pay out for customers' claims against the insured arising from any one occurrence.
- B. Determine the applicable Limit(s) Per Storage Unit reflecting the amount of liability to be assumed by a storage operator for a customer's stored property. If the operator allows their customer's to choose the amount of liability to be transferred to the operator then the rate will be determined as the average of monthly rates for all the limits options that are offered.

C. Security/Protection Credits are applied to the applicable monthly reporting rate calculated in 5.B. above based upon the following:

- i. Level 1 Credit = 10%: All of the following factors required:
 - Public access restricted by fenced (or walled) and gated perimeter.
 - Exterior lighting of facility grounds and access points.
 - Manager on premises during hours of operation.
- ii. Level 2 Credit = 20%: At least three of the following factors must apply to the Insured portfolio.
 - Customer access controlled or monitored by key pad access system or computer monitored access to individual units.
 - Premises access points and key or remote areas of facility monitored by closed circuit television or comparable video surveillance system.
 - Local burglar alarm for main facility access point(s).
 - Cylinder lock systems.
 - Frequent and routine patrols of the self-storage facility by site personnel
- iii. Level 3 Credit = 30%: All of the following factors required:
 - Central station monitored individual unit alarms.
 - Central station monitored fire alarm. (System monitors storage units, not just the office.)
 - Approved automatic fire repression system.

To qualify for a level of security/protection credit at least 80% of the storage units in the account portfolio must be protected by the applicable security/protection factor. The maximum rate credit available under this plan is 30%.

D. Moderate to substantial credits are applied when the insured accepts a deductible. As noted above, the application of the deductible represents an assumption and sharing of the liability exposure with the company. In determining the applicable deductible and corresponding rate it is noted that:

- i. Per unit deductibles and per occurrence deductibles are mutually exclusive. Only one deductible may be selected and it must be available for all limits options that the Insured may agree to be responsible for in their rental agreement.
- ii. For a 15% surcharge, the Insured may elect to have the Company adjust losses that clearly fall below the Insured's selected deductible.
- iii. For a 20% surcharge, the Insured may select an annual loss cap for their payment of property damage claims to their customers due to their deductible risk retention. This is a form of stop loss coverage. Because the probability that a Insured account's annual deductible payments will equal or exceed a given annual loss cap in direct proportion to the number of exposure units, certain annual loss cap deductible options are not available to accounts where the estimated number of exposure units during the Insured term would exceed the "Maximum # of Covered Units" level indicated in the rate plan.

E. Insured accounts that develop over 25% average monthly participation of their customers during a policy year will receive a rate credit of an additional 5% for the subsequent policy year to be applied to the final rates as developed in steps 5. A. through D. as described above.

F. Wind Damage Exclusion, Endorsement #DH 61-02 : In high wind areas where exposure to liability assumed for wind damage might make Insured locations ineligible under this program, an endorsement excluding liability coverage for property damage caused by wind storm. An additional rate credit of 5% should be applied to the final rates as developed in steps 5. A. through E. as described above.

G. This program contemplates monthly reporting of exposure units and premium adjustment. An initial deposit premium may be required by the underwriter. Insured accounts that demonstrate a predictable level of insured exposure units may be eligible for a quarterly reporting program after the first year of coverage.

H. A minimum premium of \$250 shall apply to each policy. If a policy provides coverage at more than one storage facility location, a minimum premium of \$150 shall apply to each location.

6 EXTENDED PERIOD OF INDEMNITY

As stated in the policy form, if the policy is cancelled or non-renewed for any reason other than for non-payment of premium the insured has the right to purchase up to twelve (12) months of extended liability protection under this policy. The two optional methods of determination of premium for this extended period of indemnity. The methods of payment and premium determination for this option are:

- A. The insured may pay a single premium equal to 7 times the monthly premium due in the month prior to cancellation or non-renewal; or
- B. The insured may pay a deposit premium equal to two months premium based upon the number of rental agreements in effect on the expiration date of the policy. You agree to provide us with monthly reports and pay the premium as required by the policy. We will refund any unearned premiums based on your reports and our final audit of your books within 60 days of the expiration of the extended indemnity period.



QBE INSURANCE CORPORATION

Policy No.
4759

Philadelphia, Pennsylvania

Policy No.
4759

Policy Period

From: 10/01/2003 DEANS & HOMER, INSURANCE MANAGING UNDERWRITER
To: 10/01/2004 340 Pine Street, San Francisco, CA 94104
At 12:01 A.M.
Standard Time

INSURED:

SAMPLE POLICY DECLARATIONS
100 main
San Francisco, CA 94105

PRODUCER (53333)

Proposal of Coverages
and Premium Quotation
CA

TERM PREMIUM:

State Surcharge \$5,000.00
TOTAL \$100.00
\$5,100.00

LOCATION #1

100 MAIN ST
SAN FRANCISCO, CA 94105

Coverage and conditions applicable to location #1
STORAGE OPERATOR'S CONTRACT LIABILITY POLICY

COVERAGE

Liability Occurrence Limit
Insured Storage Space Limit

LIMITS OF INSURANCE

\$2,500,000
\$2,500

DEDUCTIBLE

Occurrence Deductible Amount
Storage Space Deductible Amount
Annual Loss Cap Amount

\$5,000
\$250
\$250,000

FORMS

DH 05-43 (02-03) Limitation on Acts of Terrorism
DH 61-00 (07-03) Storage Op's Contract Liability

SPECIAL PROVISIONS:

Reporting Period: MONTHLY
Premium Payment Period MONTHLY
Reporting rate for each storage space: \$5.160
Deposit Premium:

\$5,000

LOCATION PREMIUM:

\$5,000

Companies writing property and casualty insurance business in this state are required to participate in the state Insurance Guarantee Association. If a company becomes insolvent the state Insurance Guarantee Association settles unpaid claims and assesses each insurance company its fair share.

State law requires all companies to surcharge policies to

Neja, Duane

03-6207

LAV
QBE Ins. Corp.

From: Emille Fetty [efetty@perknight.com]
 Sent: Thursday, November 06, 2003 9:11 AM
 To: Neja, Duane
 Subject: RE: Your Filing Number: QBE-IM-CA-03-01, Our file number 03-Mr, Duane,

Thank you for your email and review of the above referenced filing. On behalf of QBE Insurance Corporation we wish to respond to your concerns in the order they were presented to us:

1. A revised CARA5 and Exhibit 23 are attached as per your request." Emille - Please print out the second two sheets of the attached New Program.xls file. When I print the CARA5 to pdf it chops off the bottom of the page and I don't have the time to fix it right now.
2. As mentioned in the Explanatory Memorandum, the Company expects the losses for certified terrorism to be nominal and as such is not charging for the coverage. Therefore there is no credit associated with rejecting this coverage.
3. The Exclusion is being filed because the Terrorism Risk Insurance Act requires that the insured be given the option to select or reject the coverage. As mentioned in (2) above, there is no charge for the certified terrorism coverage. DH 05-56 would be used when the insured rejects the coverage and DH 05-57 would be used when the insured elects to have the coverage.
4. The CA-FA1 is attached. We apologize for inadvertently omitting it from the filing submission. Your questions regarding the certified terrorism forms and rates are addressed in (2) and (3) above.
5. The storage operator pays for the policy. This policy will be marketed by Deans & Homer directly to owners and operators of self storage facilities through advertising in trade publications and at trade shows for the self storage industry.

Attached is a copy of a letter from Bruce Wiener, Senior Staff Counsel at the CDI, who has already reviewed and approved this program from a compliance standpoint. Mr. Wiener has determined that a storage operator may accept responsibility for loss or damage to a customer's stored property within the terms of their rental agreement and that this transaction would not be considered an insurance transaction. We expect that this will satisfy your concerns regarding this program.

Please feel free to contact me if you have any further questions.

Thank you,
 Emille Fetty

-----Original Message-----

From: Neja, Duane [mailto:NejaD@insurance.ca.gov]
 Sent: Tuesday, November 04, 2003 2:52 PM
 To: Emille Fetty
 Subject: Your Filing Number: QBE-IM-CA-03-01, Our file number 03-6207.

Dear Mrs. Fetty,

There are a few items I found which need to be addressed before I can make a recommendation about this file and new program.

1. The projected Written and Earned Premiums should be the same amount on the CA-RA5. As it is they are different amounts, as such we cannot tell the ratio of the losses and ALAE, the ratios of each of the

MJN 11

11/06/2003

expenses and the ratio of the reserves since we do not know which amount you were taking each item to. Please submit a revised CA-RA5 with the same amount for both the Written and the Earned Premiums.

2. For the Terrorism coverage, there is no charge for that clearly stated in your Underwriting Guidelines, nor is there a clear rule which states how much of the annual premium would be attributed to coverage for acts of terrorism, therefore if an insured does request to not have this coverage we cannot tell how much of a credit would be given to them. Please revise your Underwriting Guidelines/Rate Manual to clearly show how much of the premium will be attributed to this coverage and how much of a credit will be applied when the insured elects to not have this coverage.

3. Please explain why you have an exclusion for Certified Acts of Terrorism if in fact you already charge for terrorism coverage and that would have to be excluded with form DH 05-50? When would forms DH 05-50 be used and when would forms DH 05-56 and DH 05-57 be used?

4. You have provided 6 forms which may be used with this new program, since a CA-FA1 form was not filled out, we do not know which forms are mandatory, and which are optional. Please explain which are mandatory and which are optional and also provide a detailed explanation concerning the terrorism coverage, why one form excludes it, why one form covers it, and why the rating for the coverage is not explained in the Underwriting Guidelines/ Rate Manual you provided.

5. Who pays for the policy, the person who rents the storage unit or the owner of the storage unit? Also how will this policy be marketed? Please be advised, to sell insurance and individual must be licensed to sell insurance in California, if an owner of a storage place is to sell this at the time a person rents a storage unit, then a person license to sell insurance in California would have to be the person selling this insurance to them, if an owner of a storage place is not licensed, then selling insurance to someone renting a unit would be illegal.

Since this file deems on 11/18/03, I would appreciate your response no later than Thursday November 13, 2003. Thank you for your help with this filing.

Sincerely,
Duane Neja
Associate Insurance Rate Analyst
Rate Regulation Division- LA2
Ph (213)346-6710
Fax (213)346-6824

DEPARTMENT OF INSURANCE

Legal Division, Compliance Bureau - San Francisco
45 Fremont Street, 21st Floor
San Francisco, CA 94105

Bruce S. Wiener
Senior Staff Counsel
TEL: 415-538-4128
FAX: 415-904-5490
E-Mail: wienerb@insurance.ca.gov
www.insurance.ca.gov



August 29, 2003

Claude J. Dorais
Dorais, McFarland, Grattan & Polinsky
5951 Encina Road, Suite 104
Goleta, CA 93117

SUBJECT: Deans & Homer Alternative Lease Programs

Dear Mr. Dorais:

We have your letter of August 19, 2003, setting out proposed alternative lease provisions for a landlord to assume various risks associated with the leased property in exchange for a higher rent to be paid by the tenant.

We do not believe that such contracts between landlords and tenants are insurance contracts for purposes of statutory regulation. The primary purpose of the contract is rental of the premises. The parties appear to be allocating the risk by contractual agreement. For an additional amount of rent, the risk of damage for a particular risk shifts from the lessee to the lessor. See Truta v. Avis Rent A Car System, Inc. (1987) 193 Cal.App.3d 802, 813-815.

We trusts this answers your inquiry.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bruce S. Wiener".

Bruce S. Wiener
Senior Staff Counsel

DEPARTMENT OF INSURANCE

RATE REGULATION BRANCH
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013
www.insurance.ca.gov

hand/1177-03



November 6, 2003

Perr & Knight Inc
Attn: Emilie Fetty, Senior State Filings Consultant
881 Alma Real Drive, Suite 205
Pacifio Palisades, CA 90272

RE: APPROVAL OF APPLICATION

QBE INSURANCE CORPORATION has submitted the following application for approval regarding the following line of business or program:

CDI App. No(s): 03-6207
Insurer File No(s): QBE-IM-CA-03-01
Line(s) of Insurance: Commercial Inland Marine
Program: Storage Operators Contract Liability

Only the change(s) specifically indicated in the application set forth above, as it may have been amended, is (are) approved. Nothing in this letter shall constitute approval of any other application, whether incorporated by reference, or filed prior or subsequent to the application set forth above. QBE INSURANCE CORPORATION shall begin issuing policies pursuant to this approval within 90 days of the date of this approval, provided that the insurer is licensed in California to transact the line of insurance for which the approval is given. QBE INSURANCE CORPORATION may implement this approval earlier if it is able to do so. Regardless of the implementation date, QBE INSURANCE CORPORATION shall implement this approval with the same effective date for both new and renewal business and shall offer this product to all eligible applicants as of the implementation date. This approval shall continue to have full force and effect until such time as a subsequent change for the referenced lines or programs may be approved or ordered by the Insurance Commissioner.

If any portion of the application or related documentation conflicts with California law, that portion is specifically not approved. This approval does not constitute an approval of underwriting guidelines nor the specific language, coverages, terms, covenants and conditions contained in any forms, or of the forms themselves. Policy forms and underwriting guidelines included in this filing were reviewed only insofar as they relate to rates contained in this filing or currently on file with the California Department of Insurance. Any subsequent changes to underwriting guidelines or coverages, terms, covenants and conditions contained in any forms must be submitted with supporting documentation when those changes result in any rating impact. The Commissioner may at any time take any action allowed by law if he determines that any underwriting guidelines, forms or procedures for application of rates, or any other portions of the application conflict with any applicable laws or regulations.

Sincerely,

Philip M. Pratt, OPCU
Chief, Rate Filing Bureau - Los Angeles
(213) 348-6686
prattp@insurance.ca.gov

Motion for Judicial Notice
EXHIBIT 2

Motion for Judicial Notice
EXHIBIT 2

State: California Filing Company: QBE Insurance Corporation
TOI/Sub-TOI: 09.0 Inland Marine/09.0005 Other Commercial Inland Marine
Product Name: Storage Operator's Contract Liability Policy
Project Name/Number: 2014 Revision/CA-CSP-QBE-2014-C

Filing at a Glance

Company: QBE Insurance Corporation
Product Name: Storage Operator's Contract Liability Policy
State: California
TOI: 09.0 Inland Marine
Sub-TOI: 09.0005 Other Commercial Inland Marine
Filing Type: Form/Rate/Rule
Date Submitted: 05/13/2014
SERFF Tr Num: DEAH-129540926
SERFF Status: Closed-Approved
State Tr Num: 14-3682
State Status: Approved
Co Tr Num: CA-CSP-QBE-2014-C
Co Status:
Effective Date: 06/15/2014
Requested (New):
Effective Date: 06/15/2014
Requested (Renewal):
Author(s): Lanie Schleef
Reviewer(s): Kam Fong (primary), Polly Chan
Disposition Date: 08/07/2014
Disposition Status: Approved
Effective Date (New):
Effective Date (Renewal):

State: California Filing Company: QBE Insurance Corporation
 TOI/Sub-TOI: 09.0 Inland Marine/09.0005 Other Commercial Inland Marine
 Product Name: Storage Operator's Contract Liability Policy
 Project Name/Number: 2014 Revision/CA-CSP-QBE-2014-C

General Information

Project Name: 2014 Revision Status of Filing in Domicile:
 Project Number: CA-CSP-QBE-2014-C Domicile Status Comments:
 Reference Organization: Reference Number:
 Reference Title: Advisory Org. Circular:
 Filing Status Changed: 08/07/2014 Company Status Changed:
 State Status Changed: 08/07/2014 Deemer Date: 07/29/2014
 Created By: Lanie Schleef Submitted By: Lanie Schleef
 Corresponding Filing Tracking Number:

Filing Description:

On behalf of QBE Insurance Corp., we are filing a revision to the Storage Operator's Contract Liability product form and rates. Please see the filing memorandum in the supporting documents for additional information.

The product was previously approved under CDI 03-6207.

The policy form is being revised as included in this filing.

The endorsement DH 61-02 remains available as originally filed without additional changes.

The coverage for terrorism was originally included in the product, but subsequently refilled as a line filing. As a result, the TRIA forms included in the original product have been replaced by those filed and approved CIM terrorism forms filed in CDI 09-9410 apply to this product.

Please feel free to also contact me at the below information if you have questions. Thank you for your review.

Lanie Schleef
 Filings/Regulatory Affairs
 Deans & Homer
 415-421-8332
 lanie@deanshomer.com

Company and Contact

Filing Contact Information

Lanie Schleef, Compliance and Filings lanie@deanshomer.com
 Adm.
 340 Pine Street 415-421-8332 [Phone] 242 [Ext]
 Second Floor 800-989-7801 [FAX]
 San Francisco, CA 94104

Filing Company Information

(This filing was made by a third party - deansandhomer)

QBE Insurance Corporation	CoCode: 39217	State of Domicile:
Wall Street Plaza	Group Code:	Pennsylvania
88 Pine Street - 16th Floor	Group Name:	Company Type:
New York, NY 10005	FEIN Number: 22-2311816	State ID Number:
(877) 772-6771 ext. [Phone]		

SERFF Tracking #: DEAH-129540926 State Tracking #: 14-3682

Company Tracking #: CA-CSP-QBE-2014-C

State: California Filing Company: QBE Insurance Corporation
TOI/Sub-TOI: 09.0 Inland Marine/09.0005 Other Commercial Inland Marine
Product Name: Storage Operator's Contract Liability Policy
Project Name/Number: 2014 Revision/CA-CSP-QBE-2014-C

Filing Fees

Fee Required? No

Retaliatory? No

Fee Explanation:

State Specific

Variance Requested? (Yes/No): yes

State: California Filing Company: QBE Insurance Corporation
 TOI/Sub-TOI: 09.0 Inland Marine/09.0005 Other Commercial Inland Marine
 Product Name: Storage Operator's Contract Liability Policy
 Project Name/Number: 2014 Revision/CA-CSP-QBE-2014-C

Disposition

Disposition Date: 08/07/2014
 Effective Date (New):
 Effective Date (Renewal):
 Status: Approved

Comment:

Only the changes specifically indicated in the application set forth above, as it may have been amended, are approved. Nothing in this letter shall constitute approval of any other application, whether incorporated by reference, or filed prior or subsequent to the application set forth above. QBE Insurance Corporation shall begin issuing policies pursuant to this approval within 90 days of the date of this approval, provided that the insurer is licensed in California to transact the line of insurance for which the approval is given. The insurer may implement this approval earlier if it is able to do so. Regardless of the implementation date, the insurer shall implement this approval with the same effective date for both new and renewal business and shall offer this product to all eligible applicants as of the implementation date. This approval shall continue to have full force and effect until such time as a subsequent change for the referenced lines or programs may be approved or ordered by the Insurance Commissioner.

If the approved rate change is different than originally submitted, please be reminded that you must submit copies of rate pages at the approved level within 30 days.

If any portion of the application or related documentation conflicts with California law, that portion is specifically not approved. Policy forms and underwriting guidelines included in this filing were reviewed only insofar as they relate to rates contained in this filing or currently on file with the California Department of Insurance. This approval does not constitute an approval of underwriting guidelines nor the specific language, coverages, terms, covenants and conditions contained in any forms, or the forms themselves. The Commissioner may at any time take any action allowed by law if he determines that any underwriting guidelines, forms or procedures for application of rates, or any other portions of the application conflict with any applicable laws or regulations.

Rate data does NOT apply to filing.

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Prior Approval Rate Application		Yes
Supporting Document	Filing Authorization		Yes
Supporting Document	side by side comparison		Yes
Supporting Document	Filing Memorandum		Yes
Supporting Document (revised)	Exhibits		Yes
Supporting Document	Exhibits		Yes
Form	Storage Operator's Contract Liability Policy		Yes
Rate	Rates Pages		Yes

STORAGE OPERATOR'S CONTRACT LIABILITY POLICY

UNDERWRITING MANUAL

COMPANY: QBE Insurance Corporation

1. GENERAL PROGRAM DESCRIPTION

The Storage Operators' Contract Liability Policy (SOCLP) program is designed to provide insurance coverage to support or contain the liability assumed or retained under lease agreements by self-storage facility owners or operators for loss or damage to personal property stored by the lessee (customer) at the storage facility. Self-storage operators are generally not legally liable for loss or damage to their customers' stored property. The operator generally does not have control of the stored property and bailment is not created in the typical self-storage rental transaction. This program is intended to allow the voluntary acceptance or retention of liability by the operator. The actual terms and conditions of the contract between the owner (lessor) and the customer (lessee) are not pre-determined by this program. The operator is free to draft his contract and accept responsibility for loss or damage to stored property from such causes and occurrences as the operator believes to be appropriate for his level of tolerance for this business risk. This product provides a method of containing the loss exposure of this risk transfer by insuring the operator's liability for damage arising from certain causes of loss that have been identified as potentially catastrophic and which would otherwise prohibit the self-storage operation from retaining or accepting this risk on behalf of his customer.

2. ELIGIBILITY

For eligibility guidelines, refer to Underwriting Guidelines on file with the company.

3. TERRITORY

All U.S. states in which this manual has been filed.

4. COVERAGE

This policy will indemnify the insured self-storage facility owner or operator for liability assumed or retained under a written rental agreement, lease, or addendum to lease for loss or damage to a customer's stored property. This policy will only indemnify the operator for liability assumed or retained for property damage resulting from the causes of loss not otherwise excluded in the policy form. The policy language excludes liability for damage caused to certain types of property as described in the policy form. The operator may retain very little or a substantial portion of the risk of liability assumed under the rental agreement. However, the rate plan requires that operator place a dollar limit on their assumption of liability in the lease agreement that corresponds to the Limit(s) Per Storage Unit selected to be offered at the location.

5. RULES FOR DETERMINATION OF PREMIUM

This premium for this program is determined by the application of a rate to the risk exposure base, which is measured by the number of storage units that have entered a rental agreement that transfers the responsibility for loss or damage of stored property from the customer to the operator. All rates shown in the rate plan represent the monthly charge per exposure unit. The monthly rate shall be rounded to the nearest cent (\$.01) after each adjustment to the base loss rate described below. The applicable rate charge(s) per location are determined as follows:

- A. Select the appropriate base loss rate based upon the Limit(s) Per Storage Unit and Annual Policy Aggregate reflecting the amount of liability to be assumed by a storage operator for a customer's stored property. If the operator allows their customers to choose the amount of liability to be transferred to the operator then the rate will be determined as the average of monthly rates for all the limits options that are offered.
- B. If a storage facility insured under this program is located between 1 and 25 miles of the Atlantic Coast, south of the Rhode Island/Massachusetts border, through the Gulf Coast, a separate catastrophe load for wind coverage will be applied unless the insured accepts a wind exclusion endorsement. Facilities located less than 1 mile off the Atlantic through Gulf Coast border described above are not eligible for

wind coverage and must accept the wind exclusion endorsement. Where a wind exclusion is applied, a 5% credit will be applied to the base rate.

- C. Moderate to substantial credits are applied when the insured accepts a deductible. As noted above, the application of the deductible represents an assumption and sharing of the liability exposure with the company. Apply the applicable deductible credit to the base loss rate according to the deductible credit schedule in the rate pages.
- D. This program will allow an annual loss cap in consideration of a modest debit to the modified base loss rate as determined by the rate considerations described above. An annual loss cap means that the insured will not be responsible for contribution of any deductible for any additional covered claims made against the insured during the annual policy term.
- E. After application of all applicable debits and credits to the base loss cost, add the expense load constant to develop the final monthly rate per space.
- F. This program contemplates monthly reporting of insured units and premium adjustment. An initial deposit premium equal to the two months of estimated premium development should be charged. Insured accounts that demonstrate a predictable level of insured exposure units may be eligible for a quarterly reporting program after the first year of coverage.
- G. A minimum premium of \$250 shall apply to each policy.

6. EXTENDED PERIOD OF INDEMNITY

As stated in the policy form, if the policy is cancelled or non-renewed for any reason other than for non-payment of premium, the insured has the right to purchase up to 12 months of extended liability protection under this policy. There are two methods of determination of premium for this optional extended period of indemnity. The methods of payment and premium determination for this option are:

- A. The insured may pay a single premium equal to 7 times the monthly premium due in the month prior to cancellation or non-renewal; or
- B. The insured may pay a deposit premium equal to two months premium based upon the number of rental agreements in effect on the expiration date of the policy. The insured must agree to provide us with continued monthly reports and pay the premium as required by the policy. We will refund any unearned premiums based on the reports and our final audit of the insureds books within 60 days of the expiration of the extended indemnity period.