

6. IT IS RECOMMENDED that if the City Attorney concludes, after a careful analysis of applicable law, that the issue of lifestyle discrimination in insurance opportunities can be addressed through the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq., and the City Attorney finds that a person or entity in the insurance business is engaging in a pattern or practice of unlawful discrimination against insureds or applicants for insurance on the basis of lifestyle, that he or she bring an action against that person or entity for violation of the Unruh Civil Rights Act and/or an action for unfair business practices under California Business and Professions Code section 17200 et seq.

III DISCRIMINATION BY THE INSURANCE INDUSTRY
AGAINST THE NON-TRADITIONAL FAMILY UNIT
OR LIFESTYLE DISCRIMINATION

Several witnesses testified at the Task Force's public hearings that insurance companies do engage in lifestyle discrimination.

For example, in his public hearing testimony, Tony Melia, President of National Business Insurance Agency (NBIA), told the Task Force of lifestyle discrimination by insurance companies in property and casualty insurance.^{1/} In the area of homeowners coverage, some companies are refusing to issue one joint policy in the names of both same-sex householders, as their interests may appear, even though joint policies are issued routinely to married couples. When it comes to automobile insurance, most companies will not offer a family discount to an unmarried couple who live together and share cars, even though such discounts are offered to blood relatives or married couples. Some companies are discreet in the way they discriminate. Others are more blatant. One company wrote to NBIA and complained that the agency was writing too many policies for unmarried persons.

Additionally, Brendt Nance, President of Concerned Insurance Professionals for Human Rights, documented lifestyle discrimination in health, life, and disability

^{1/} Public Hearing Transcript, p. 189.

insurance.^{2/} In the area of life insurance, he reported that some companies refuse to issue a policy if the consumer names a beneficiary who is not related by blood, marriage, or adoption. When it comes to health insurance, he gave an example of marital status discrimination in rate setting. He said that one major carrier charges two unmarried 35-year-olds a total of \$213.60 per month for basic coverage, while a married couple can purchase the same coverage for \$197 per month.

Lastly, Leonard Graff, Legal Director for National Gay Rights Advocates (NGRA), recounted numerous cases of lifestyle discrimination against gays and lesbians.^{3/} He told how NGRA has received complaints concerning automobile insurance, homeowner and renter policies, umbrella or excess liability policies, and health insurance. Some of the complaints have to do with outright denial of coverage, others have to do with the naming of beneficiaries, but most pertain to rate discrimination against unmarried couples.

Mr. Graff explained how NGRA was able to convince the Automobile Club of Southern California to extend family discounts for automobile insurance coverage to unmarried couples. Previously, the discount was available only to married couples. Some companies have followed AAA's example, but others persist in extending family discounts only to married couples. However, the AAA reform only applies to insurance and not to membership in the Auto Club. The Automobile Club of Southern California continues to maintain membership discount practices which discriminate against unmarried couples. A married couple gets preferred pricing, with one master membership and a discounted associate membership. An unmarried couple, on the other hand, must pay for two master memberships. The issue of discrimination was raised last year at AAA's annual membership meeting. Members complained that preferred discount rates for married couples

^{2/} Public Hearing Transcript, p. 196.

^{3/} Public Hearing Transcript, p. 114.

violated state and local laws against marital status and sexual orientation discrimination by business establishments in the City of Los Angeles. In view of changing demographics and family structures in Southern California, the Auto Club created an internal AAA Task Force to review membership rating practices and to recommend possible revisions to the Board of Directors.

Lifestyle discrimination also occurs in the area of renter's insurance. Renter insurance protects occupants of an apartment of house against property damage or liability. Most insurance companies will not issue one policy to an unmarried couple renting an apartment. They require two policies, which, of course, requires the payment of two premiums. A married couple, however, can save money by obtaining a joint policy.

According to NGRA, in the area of homeowner, renter, and automobile insurance, lifestyle discrimination does not usually involve outright denial of coverage--rather, it involves the setting of higher rates for unmarried couples than married couples. In other words, lifestyle discrimination is primarily rate discrimination on the basis of marital status or sexual orientation.

IV RECOMMENDATIONS CONCERNING WHAT THE CITY OF LOS ANGELES CAN DO TO CURB DISCRIMINATION AGAINST THE NON-TRADITIONAL FAMILY UNIT BY THE INSURANCE INDUSTRY

A. Current Regulatory Practices and Existing Law

Before making recommendations as to what the City of Los Angeles might be able to do to curb discriminatory practices engaged in by the insurance industry against the non-traditional family unit, current regulatory practices and existing law should be examined in order to determine whether the City can use existing law to participate in the identification and prosecution of such unlawful discrimination.

While at first glance the issue of discrimination by those engaged in the insurance business in this state is a matter for statewide rather than local concern, as will be set forth below, existing law may provide methods by which local entities, who seek to protect their residents from such unlawful and discriminatory practices, can address the issue.

The State Insurance Commissioner

The State Insurance Commissioner and the State Department of Insurance (hereinafter collectively referred to as the

"Commissioner") are primarily responsible for the regulation of those engaged in the insurance business in this state. As such, it is appropriate that this paper examine the Commissioner's authority to take action against those who engage in lifestyle discrimination against applicants for insurance and/or insureds.

Pursuant to Insurance Code section 12921.3 any person may file a written complaint with the Commissioner concerning the "handling of insurance claims by insurers" or "the alleged misconduct by insurers or production agencies." The Commissioner is required to investigate such complainants, to acknowledge receipt of such complaints in writing, may seek to mediate complaints, and is required to notify the complainant of the final action to be taken on his or her complaint. (Ins. Code §§ 12921.3 and 12921.4(a).) Moreover, the Insurance Commissioner is required to "ascertain patterns of complaints and periodically evaluate the complaint patterns to determine what additional audit, investigative, or enforcement actions which may be taken by the Commissioner" (Ins. Code § 12921.4(b).) Can a victim of lifestyle discrimination file a complaint with the Commissioner under the above-described statutory scheme? The answer to this question would appear to be Yes.

Insurance Code section 790 et. seq. provides for remedies available through the Commissioner for unfair practices engaged in by those in the business of insurance. (Ins. Code §§ 790.01-790.02.) Included in the unfair practices prohibited by this statutory scheme is discrimination on the basis of marital status and sexual orientation. Title 10, California Administrative Code section 2560.3, a regulation promulgated by the Commissioner pursuant to Insurance Code section 790.10, provides in relevant part:

"No person or entity engaged in the business of insurance in this State shall refuse to issue any contract of insurance or shall cancel or decline to renew such contract because of the sex, marital status or sexual orientation of the insured or prospective insured."^{4/}

^{4/} A copy of this regulation is Appendix 1 to this paper.

The Commissioner has the power to conduct investigations of alleged unfair practices, including those prohibited by regulation section 2560.3 (Ins. Code § 790.04), and, where appropriate, may commence an administrative action against the alleged violator. (Ins. Code § 790.06.) If, after an administrative hearing, the Commissioner determines that a violation has occurred, he or she may issue a written report so declaring. (Ins. Code § 790.06(a).) If the person or entity does not thereafter cease from engaging in the unfair practice, then the Commissioner, through the State Attorney General, may seek a court order restraining the person or entity from continuing to engage in such practice. (Ins. Code § 790.06(b).) A recalcitrant person or entity who defies a court order which enjoins the unfair practice, in addition to a contempt proceeding, faces fines and possible suspension of his, her or its license or certificate to engage in the insurance business. (Ins. Code § 790.07.)

From the foregoing it would appear, therefore, that the Insurance Commissioner may address instances of lifestyle discrimination brought to his or her attention through the complaint procedure authorized by Insurance Code sections 12921.3-12921.4 for violation of Insurance Code section 790 et seq. and Regulation section 2560.3. However, testimony presented to this Task Force indicates that Regulation section 2560.3 is currently interpreted by the Commissioner to provide protection against lifestyle discrimination only insofar as coverage is denied on such basis, but not insofar as a person is charged a higher rate for coverage because of the lifestyle in which he or she is engaged.^{5/} (See testimony of Leonard Graff before Task Force on February 6, 1987 at page ____.) Accordingly, to the extent that lifestyle discrimination exists with respect to the rates charged by insurers, the Insurance Commissioner apparently does not currently provide any relief.

^{5/} The correctness of this interpretation of Regulation section 2560.3 is not challenged herein as the interpretation of a regulation by the agency charged with its enforcement is entitled to great weight. (Judson Steel Corp. v. Workers Comp. Appeals Bd. (1978) 22 Cal.3d 658, 668 and Gay Law Students Assn. v. Pacific Tel. & Tel. Co. (1979) 24 Cal.3d 458, 491.)

The Unruh Civil Rights Act

The Unruh Civil Rights Act, California Civil Code section 51, as will be discussed below, may provide a mechanism for the eradication of lifestyle discrimination which may not be addressed by the Insurance Commissioner. Civil Code section 51 states in relevant part:

"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, or national origin are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

The Unruh Act bars all forms of arbitrary discrimination, and those protected by the Act are not limited to members of the classes which are specifically enumerated therein. (In re Cox (1970) 3 Cal.3d 205, 216.) For example discrimination on the basis of sexual orientation, which is not specifically mentioned in the Act, has been held to be covered by the Unruh Act. (Rolon v. Kukwitzky (1984) 153 Cal.App.3d 289.) The Unruh Civil Rights Act is the codification of California's common law doctrine that enterprises affected with a public interest may not discriminate arbitrarily. (In re Cox, supra, 3 Cal.3d 205, 212.)

The phrase "all business establishments of every kind whatsoever" in Civil Code section 51 has also been expansively and liberally construed. (See for e.g., O'Connor v. Village Green Owners Assn. (1983) 33 Cal.3d 790, 793-794 and Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 731.)

In Burks v. Poppy Construction Co. (1962) 57 Cal.2d 463, 468-469, the Supreme Court stated:

"The Legislature used the words "all" and "of every kind whatsoever" in referring to business establishments covered by the Unruh Act (Civ. code, § 51, and the inclusion of these words, without any exception and without specification of particular kinds of enterprises, leaves no doubt that the term "business establishments" was used in the broadest sense reasonably possible. The word "business" embraces everything about which one can be employed, and it is often synonymous with "calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain." (See Mansfield v. Hyde, 112 Cal.App.2d 133, 137 [245 p.2d 577]; 5 Words and Phrases (perm. ed. 1940) p. 970 et seq.) The word "establishment," as broadly defined, includes not only a fixed location,

such as the "place where one is permanently fixed for residence or business," but also a permanent "commercial force or business;" but also a permanent "commercial force or organization" or "a permanent settled position (as in life or business:)" (See Webster's New Internat. Dict. (2d ed. 1957) p. 874; id. (3d ed. 1961) p. 778.)'"

Factors such as the number of persons employed, physical facilities maintained, fees charged, advertising solicited or sold, collection of royalties, and the performance of other "customary business functions" may identify an entity or person as a "business establishment" within the meaning of the Unruh Act. (Curran v. Mount Diablo Council of Boy Scouts (1985) 147 Cal.App.3d 712, 730 and Pines v. Tomson (1984) 160 Cal.App.3d 370, 386.) Moreover, the term "business" has been held to include both commercial operations and noncommercial entities which are public accommodations or affected with a public interest or which have businesslike attributes. (Pines v. Tomson (1984) 160 Cal.App.3d 370, 385, 386.) Finally, the Unruh Act not only covers the arbitrary exclusion of persons from a business establishment or service, but with also business practices which result in the unequal treatment of patrons or those who wish to use services provided by a business establishment. (Koire v. Metro Car Wash (1985) 40 Cal.3d 27, 29.)

While no reported case has ever specifically applied the Unruh Act to arbitrary discrimination by any entity or person who is engaged in the insurance business, given the broad and expansive interpretation which has been given the term "all business establishments of any kind whatsoever," the applicability of the Unruh Act to those engaged in the insurance business is almost certain. Moreover, since the Act prohibits all forms of arbitrary discrimination, arbitrary discrimination based upon lifestyle may also be held to be prohibited by the Act. Assuming both of the above issues of first impression would be resolved as indicated above in an action filed by the City Attorney, one major obstacle to successfully prosecuting a case to curb discrimination on the award of lifestyle exists. A "business establishment" may avoid liability under the Unruh Act if it can establish that there are "reasonable department regulations that are rationally related to the services performed and facilities provided," which justify the otherwise discriminatory conduct. (In re Cox (1970) 3 Cal.3d 205, 217 and Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 737.) This defense would have clear applicability in the case of discrimination in rates charged by insurance companies. As such, in any case brought to curb lifestyle discrimination, a major factual and legal issue would no doubt be whether the particular form of

lifestyle discrimination can be justified under this "reasonable business regulation" defense.

This brings us to the next question. Who is responsible for the enforcement of the Unruh Act? First of all, violations of the Unruh Act can be redressed through a private action brought by the person aggrieved by a discriminatory practice or action. (Civ. Code § 52(a).) Such aggrieved person is entitled to treble his or her actual damages, but in no case less than \$250, and attorney's fees. Injunctive relief is also available.

Second of all, a victim of a practice which violates the Unruh Act can seek redress through the Department of Fair Employment and Housing. Complaints may be filed with the Department (Gov. Code §§ 12948 and 12960-12976.) The Department will then investigate the complaint (Gov. Code §§ 12963), attempt to conciliate the complaint if (Gov. Code § 12963.7), and in its discretion, may institute an administrative action against the offending party. (Gov. Code § 12965.) Such an administrative action, if filed, would be tried before the Fair Employment and Housing Commission which eventually would render a decision in the case and would take "such action . . . [a]s in its judgment . . . would effectuate the purposes of Part 2.8 of Government Code.^{6/}

Lastly, but most importantly for purposes of this paper, the Attorney General, District Attorneys and City Attorneys are authorized to bring injunctive relief actions to enjoin a "pattern or practice" of violating the Unruh Act. (Civ. Code § 52(c).) The extent to which the Unruh Act has been used by the Attorney General, the Los Angeles County District Attorney and the City Attorney, however, to combat discrimination in the insurance industry is unknown.^{7/}

^{6/} Government Code section 12948 which makes a violation of the Unruh Act a violation of the Fair Employment and Housing Act, Government Code section 12900 et seq., is included in Part 2.8.

^{7/} Civil Code section 52(c) authorizes "preventive relief" which includes injunctive relief. The term preventive relief has never been judicially defined. Accordingly, some creativity can be used in formulating the type of relief to be requested when prosecuting patterns or practices of violations of the Unruh Civil Rights Act.

Business and Professions Code Section 17200 et seq.

Business and Professions Code section 17200 et seq. prohibits unfair competition in this state. Unfair competition is defined to include "unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising." (Bus. & Prof. Code § 17200.) This definition, however, is not restrictive. (Athena's Lodge No. 70 v. Wilson (1953) 117 Cal.App.2d 322, 325.) The prohibitory reach of this statutory scheme is not limited to deceptive or fraudulent conduct but extends to any unlawful business conduct. (Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 930 and Children's T.V. Inc. v. General Foods Corp. (1983) 35 Cal.3d 197, 209-210.)

Accordingly, there is potential, to extent that lifestyle discrimination can be termed "unfair" or "unlawful" to bring a civil action against those engaging in lifestyle discrimination for unfair competition under Business and Professions Code section 17200 et seq.

As is the case with the Unruh Civil rights Act, the Attorney General, District Attorneys and City Attorneys may bring an action for injunctive relief to enjoin the act of unfair competition.^{8/} (Bus. & Prof. Code § 17204.) Moreover, the Attorney General, District Attorneys, and City Attorneys may seek civil penalties of no more than \$2,500 for each violation against those who engage in unfair competition. (Bus. & Prof. Code § 17206.)^{9/}

^{8/} City Attorneys from any city having a population over 750,000 have the right to bring these actions. (Bus. & Prof. Code § 17204.)

^{9/} It is important to note that the remedies provided by Business and Professions Code sections 17200 et seq. are cumulative to other remedies provided by law. Accordingly, an Unruh Act claim may be joined with a claim under Business and Professions Code section 17200 et seq. (Bus. & Prof. Code § 17205.)

B. Recommendations

As discussed above, the City Attorney may seek to address the issue of discrimination against the non-traditional family unit by the insurance industry by filing actions under the Unruh Civil Rights Act, Civil Code section 51 and/or Business and Professions Code section 17200 et seq. However, in order to prosecute such cases the City Attorney must first have access to information and evidence which documents such unlawful discrimination. In order that the City Attorney maximize his/or her effectiveness, yet minimize the taxing effect on the resources of the City Attorney's Office, the following recommendations are made with regards to the investigation and prosecution of those engaged in the insurance business who discriminate against the non-traditional family unit:

1. IT IS RECOMMENDED that the City Attorney carefully evaluate the possibility of using the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. to combat lifestyle discrimination in insurance opportunities. The question of whether either of these statutory remedies can be used to combat lifestyle discrimination which is engaged in by the insurance industry encompasses many issues of first impression. As such, a careful and more thorough legal analysis than the one contained in this paper should be done to ensure that these statutes do indeed provide viable remedies.
2. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the State Insurance Commissioner for the referral to the City Attorney's Office of complaints lodged with the Commissioner by Los Angeles residents wherein discrimination on the basis of lifestyle is alleged. Pursuant to Insurance Code section 12921.5, the Insurance Commissioner may meet with "persons, organizations and associations interested in insurance for the purpose of securing cooperation in the enforcement of the insurance laws of this state" and "may disseminate information concerning the insurance laws of the State . . ."^{10/}

^{10/} The Commissioner also has the duty to advise the District Attorney of the relevant county when he or she finds that an insurer, its officers, agents or employees are violating any of the penal provisions of the Insurance Code or of "other laws" (Ins. Code sec. 12928).

The City Attorney should request that the Insurance Commissioner exercise his or her powers under this statute and provide the City Attorney with appropriate information.

3. In order for the City Attorney to prosecute an action under the Unruh Civil Rights Act, "a pattern or practice of discrimination" must be established. One way of gathering information regarding patterns or practices of discrimination occurring within the City of Los Angeles would be to exchange information regarding claims of unlawful discrimination engaged in by those in the insurance business with other prosecutorial offices within the Los Angeles with jurisdiction to enforce the Unruh Civil Rights Act. Accordingly,

IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with both the Attorney General's Office and the Los Angeles County District Attorney's Office for the exchange of information regarding complaints of lifestyle discrimination by the insurance industry which are lodged with each agency. The sharing of this information will assist in identification of patterns or practices of discrimination by those engaged in the insurance business within the City of Los Angeles.

4. Pursuant to Government Code sections 12930(f)(2) and 12948 the State Department of Fair Employment and Housing is authorized "to receive investigate, and conciliate complaints alleging a violation of [Unruh Civil Rights Act]." (Gov. Code § 12930(f)(2).) As is the case with the Attorney General and the Los Angeles County District Attorney, the Department may have information concerning alleged lifestyle discrimination by the insurance industry which occurs in the City of Los Angeles. Accordingly, IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the Department of Fair Employment and Housing for the exchange of information regarding alleged instances of lifestyle discrimination by those engaged in the insurance business in the City of Los Angeles.
5. To further increase the effectiveness of the City Attorney in enforcing the Unruh Civil Rights Act, information must be obtained and exchanged with local civil rights organizations within the City of Los Angeles. Often these groups are unaware of the remedies available under current laws. Thus,

IT IS RECOMMENDED that the City Attorney seek to establish working arrangements with local civil rights organizations to exchange information regarding complaints of lifestyle discrimination by the insurance industry. The recommended organizations would include, but not be limited to: American Civil Liberties Union; Concerned Insurance Professionals for Human Rights; and the Los Angeles Urban League.

6. Discrimination in insurance opportunities against the non-traditional family unit may have a severe economic impact on many residents of this City. As stated by Brent O. Nance in his testimony before the Task Force on March 16, 1987:

"In our society insurance has become an integral part of our culture. It is often the only practical means available for the majority of us to protect ourselves and families against the financial ruin created by death, disability or serious medical problems. Indeed, insurance has become a basic financial necessity for most Americans."

Accordingly, in order to ensure that Los Angeles City residents, regardless of lifestyle, have equal access and opportunity to insurance services, IT IS RECOMMENDED that if the City Attorney concludes, after a careful analysis of applicable law, that the issues of lifestyle discrimination in insurance opportunities can be addressed through the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. and the City Attorney finds that a person or entity in the insurance business is engaging in a pattern or practice of unlawful discrimination against insureds or applicants for insurance on the basis of lifestyle, that he or she bring an action against that person or entity for violation of the Unruh Civil Rights Act and/or an action for unfair business practices under California Business and Professions Code section 17200 et seq.

CALIFORNIA LEGISLATURE

Joint Select Task Force on the Changing Family

FOR RELEASE ON:
June 9, 1989

CONTACT PERSON:
Thomas F. Coleman
(213) 258-8955

LEGISLATIVE TASK FORCE RECOGNIZES DOMESTIC PARTNERSHIPS AS PART OF THE CHANGING FAMILY AGENDA IN CALIFORNIA

Proposals Focus on Employee Benefits, School Curricula, Insurance Discrimination, and Rights of Survivors

A report just published by a state task force urges California lawmakers to recognize domestic partnerships as family relationships.

The report of the Joint Select Task Force on the Changing Family also includes several recommendations to eliminate discrimination against the nearly 1.4 million adults who live in unmarried-couple households in California. The domestic partnership proposals recommend that:

- * Public policies should respond to the changing needs of today's families, while respecting their privacy, integrity, and diversity; (See Report, page 11)
- * Domestic partnerships should be recognized as family relationships; (See Report, page 101)
- * Employee benefit plans should define family broadly enough to encompass the diversity of today's families, regardless of family structure; (See Report, page 27)
- * Public schools should expand curricula to promote recognition of family diversity by providing students with current information on changing family structures; (See Report, page 73)
- * Counseling services, whether publicly funded or provided through private health plans, should serve not just individuals, but all families regardless of their structure, including unmarried couples. (See Report, page 84)
- * Insurance practices, such as rate discrimination against unmarried couples, should be prohibited; (See Report, pages 100-102)
- * Wrongful death laws should be amended to allow adult dependents to recover damages when a domestic partner is killed by a criminal, drunk driver, or by other intentional or negligent conduct of a wrongdoer. (See Report, pages 100-102)

CONSUMER TASK FORCE ON MARITAL STATUS DISCRIMINATION

Office of the Los Angeles City Attorney

Final Report Issued in March 1990

**Excerpts from Supplement to Final Report
Submitted to Insurance Commissioner's Antidiscrimination Task Force
by Thomas F. Coleman, Task Force Member
on July 30, 1992, at San Francisco**

FOR CONSIDERATION BY THE
CONSUMER TASK FORCE ON
MARITAL STATUS DISCRIMINATION

"Findings and Recommendations
Regarding Insurance Practices and Membership Discounts"

Michael F. Cautillo
USC Law Student Intern
November 28, 1989

TABLE OF CONTENTS

	Page
I Existence of Marital Status Discrimination in Los Angeles	1
II Specific Findings	3
A. Insurance (Automobile, Renters, Liability)	3
B. Insurance (Health)	5
C. Membership Discounts	5
D. Airline Frequent Flier Programs	7
E. Credit	8
III Alleged Justifications for Discrimination	10
A. Insurance	10
B. Consumer Discounts	10
IV Existing Laws and Remedies	12
A. Unruh Civil Rights Act	12
B. Insurance Laws	14
C. Regulation of Licensed Professionals	17
D. Laws Pertaining to Credit Transactions	18
V Recommendations	23

EXISTENCE OF MARITAL STATUS

DISCRIMINATION IN LOS ANGELES

This current Task Force on Marital Status Discrimination is an outgrowth of the previous Task Force on Family Diversity which issued its final report on April 9, 1989. Research was conducted to discover the extent of marital status discrimination against consumers. Several areas were targeted. These include the insurance industry, membership discounts in the auto- and health-club industries, and the airline industry. These areas were targeted because they comprise such an integral part of a Los Angelian's day-to-day life. These are areas which are no longer luxuries but, rather, due to their lifestyles, have become such indispensable necessities to the citizens of Los Angeles. As a result, discrimination here effects us most deeply, both in our purses and in our consciences.

The following research reveals that marital status discrimination exists in all of the above areas to differing degrees. It ranges from outright denial of any insurance coverage at all to some unmarried individuals to a total absence of any such discrimination whatsoever. (See Exhibit A, p. 1) Due to the lack of time and resources the research presented here is limited. Thus, this does not imply that the businesses discussed here are the only businesses which discriminate.

Since marital status discrimination seems to pervade all aspects of consumer transactions. However, it frequently varies among businesses. The fact that this discrimination is so bold

in one company and virtually non-existent in another within the same industry gives one pause. If competing companies can survive, and indeed thrive, without discriminating on the basis of marital status, perhaps this type of discrimination has no rational basis at all.

SPECIFIC FINDINGS

A. Insurance

(Automobile, Renters, Liability)

1) **SAFECO**

A) **Lyddy-Martin Company**

The price of renters' insurance was unaffected by either the number of people living in the apartment nor their marital status.

B) **Schlosberg Norman & Associates**

No insurance policies would be issued for either renters or cars if the persons are under the age of 29 and unmarried. If the persons are married, then this agent would issue both renters' and car insurance to them regardless of their ages.

C) **Brown-Beauchamp Insurance Agency**

No joint policies would be issued unless persons were related by blood, marriage or adoption. Otherwise, the individuals must purchase two, sperate insurance policies.

2. **Allstate**

A) **9024 Olympic Boulevard**

Renters' insurance policies were issued independent of the number of persons in the household or their marital status. In addition, the cost of renters' insurance was unaffected by these variables.

This agent would not issue a joint car insurance policy to two unmarried persons but offered to issue the policy to one person and to have the other person as an insured driver with no extra charge.

3. State Farm

A) 4201 Wilshire Boulevard

This agent was willing to issue joint auto and renters' policies regardless of marital status with no extra charge.

B) 7154 Melrose Avenue

This agent was also willing to issue joint auto and renters' policies regardless of marital status with no extra charge.

4. Farmers

A) 3608 1/2 West 6th Street

This agent was also willing to issue both joint car and renters' insurance regardless of marital status or number of persons in the household with no extra charge.

An additional agent at this same office was located regarding the above policies. He hesitated and said he needed to contact the underwriters to obtain more information before he could determine whether he could issue joint policies.

B) Underwriting Headquarters

This underwriter said she would issue an umbrella policy for married couples but two separate policies would be needed for unmarried couples. She did, however, know of one case where a

mother and son were issued a joint policy. (See Exhibit B)

5. **Automobile Club of America**

A) **AAA of Southern California**

This agent will issue joint insurance for both automobiles and home furnishings regardless of marital status and the price would not vary.

B. **Insurance**

(Health)

1. **Blue Cross/Blue Shield**

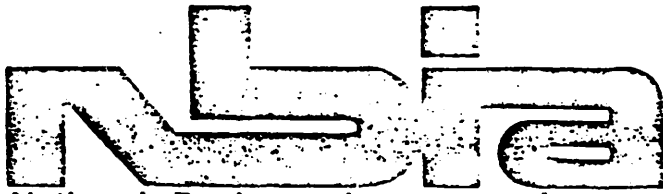
This insurance company offers a family plan, defining a "family" in their advertizing as a couple and their children. The Los Angeles office further defines a "couple" as two married people.

C. **Membership Discounts**

1. **Automobile Clubs**

A) **Automobile Club of Southern California**

AAA charges new members \$50 for the first year with a \$35 renewal fee for each subsequent year. An additional person may be added to the membership plan for an additional charge of \$13 per year. This person must be a spouse of the original member.*



National Business Insurance Agency
Anthony F. Melia, CIC President

February 14, 1990

Ms. Suzanne Miller
Progressive Casualty Insurance
11010 White Rock Road
P.O. Box 2350
Rancho Cordova, California
95741-2350

RE: Department of Insurance File #R9011430
Policy #SMT0260-592-0

Dear Ms. Miller:

I'm in receipt of your correspondence dated February 8, 1990. While you have suggested that there are rating discrepancies, my discussion with the insurance agent Bennett F. Witeby and customer service representative Kathy Walker, she has indicated that notes in her file show that your underwriter Daphne rated the policy on November 28, 1989. This was rated in your underwriting department and not the underwriting department of the insurance agency. Further to that, Daphne acknowledged that the rate was for territory 54 and provided the premiums applicable.

Further, Ms. Walker indicates that she provided your underwriter Daphne with the age, birthdate, and marital status for me and expected that a valid rate would be provided.

While you indicate, "there is also a 20% surcharge applied to unmarried operators", I feel this is wildly discriminating. I doubt that you are able to give any substantial proof that a driver who is divorced, separated, widowed or single, exposes the company to any greater risk than somebody who is married and living with his or her spouse! It is my sound belief that your 20% surcharge for people who have chosen to be single or who have become divorced or separated from their spouse or who have the misfortune of being widowed is repugnant, reprehensible and totally indefensible.

Further, your pointing out in your fifth paragraph that I had the option of requesting a prorata cancellation is fallacious.

1017 N. LaCienega Blvd. West Hollywood, CA 90069-9006 128p 152
P.O. Box 691006, West Hollywood, California 90069-9006 (213) 659-4700

In other words, "if you don't like the fact that we discriminate against single people, go elsewhere"! I do not believe that this the manner in which we expect business to be conducted in the state of California. I feel that discrimination is an ugly tactic for any business and especially insurance companies.

I would hope that you reconsider your errors and revise the premium with an apology.

Sincerely,


Anthony F. Melia

cc: The Department of Insurance, Attn: Candy Hernandez
3450 Wilshire Boulevard
Los Angeles, California 90062

Thomas F. Coleman, Chairperson ✓
Consumer Task Force On Marital Status Discrimination
Office of City Attorney
1800 City Hall East
Los Angeles, California 90012

Joan Howard, Sr. Underwriting Officer
The Department of Insurance
3450 Wilshire Boulevard
Los Angeles, California 90062

/dm



February 8, 1990

Anthony F. Melia
Post Office Box 691006
West Hollywood, CA 90069-9006

Policy Number: SMT 0260-592-0
DOI File Number: R-9011430

Dear Mr. Melia:

This letter is a response to a Department of Insurance inquiry made at your request.

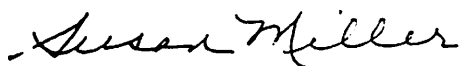
It has been requested that we explain the rating discrepancies on your policy. Enclosed are copies of our Over 50 Motorhome rate tables. I will highlight the proper rates as they relate to your policy. The agent used rates from the wrong annual premium package when he worked up your quotation. The agent used the premium package from territory group one for drivers age 60 and over. The proper rate is listed in territory group four for drivers age 50-59. There is also a 20% surcharge applied to unmarried operators. I will highlight this provision in the rateguide.

The Department of Insurance has requested information pertaining to Progressive's Insurance Rate Filing. This rateguide has been filed as of June 2, 1989 file #3598. The rates in this program have been in effect since March 1, 1988 for New Business and April 1, 1988 for Renewals. A revision to the Uninsured/Underinsured Motorist rates are made effective 12-31-88. The revision was included in the June 2, 1989 rate filing.

When you received your revised premium you had an option of requesting a prorata cancellation on the misquoted rate. You did not, however, request cancellation. You sent in a payment for the remaining balance and this account is now paid in full.

I hope the information I've provided answers your questions as to why the uprate occurred. I'm afraid an explanation of the rating is all I can offer. We do not offer an adjustment of rates on misquotes.

Thank you,



Susan Miller
Progressive Casualty Insurance

cc: Department of Insurance
cc: Agent
cc: File

Enclosure

General Information And Rules

COMMISSION

15% for all business including new, renewal and transfer. Do not retain commission, you will be paid by monthly statement.

BINDING AUTHORITY

Coverage is bound as of the effective date on the application, provided:

1. The envelope containing the application is postmarked within 72 hours of the effective date.
2. The application is filled out completely.
3. The application is signed by the applicant.
4. Proper payment accompanies the application.

If the postmark is later than 72 hours, coverage will be effective on the postmark date.

CANCELLATION GUIDELINES

1. **FLAT CANCELLATIONS** — Flat cancellations will not be permitted after the inception date of the policy.
2. **INSURED'S REQUEST** — Cancellation requested by the insured requires either the return of the policy or the insured's written request. Effective date of the cancellation will be no earlier than the postmark date of the mailing of the request to our office.
3. **LOSS PAYEE** — If there is a loss payee, this office will mail a notice of cancellation, unless the loss payee releases his copy of the policy or submits a written release.
4. **COMPUTATION OF PREMIUM** —
 - a. Cancellations requested by the insured will be cancelled on a short-rate basis using the customary short-rate table. Policies cancelled for non-payment of premium are interpreted to be cancelled by insured's request and will be computed short rate.
 - b. Cancellations requested by the company will be cancelled on a pro-rata basis.
 - c. A \$50 minimum earned premium applies to all cancellations.
5. **TOTAL LOSS** — Cancellations requested due to a total loss will be cancelled effective the day after the loss, if requested within 60 days of the date of loss. After 60 days, standard cancellation rules will apply. A total loss does not automatically cancel an in-force policy. We must receive a signed release.

ENDORSEMENTS

If an endorsement results in additional premium, send no money with the request. The insured will be billed directly for any amounts due.

ELIGIBILITY

To qualify, the motorhome must be:

1. **Used only for recreational purposes.** The motorhome does not qualify if rented, driven to and from work, used for business purposes, used as a principal residence, or if it is the only vehicle in the household.
2. **A conventional or mini-motorhome.** The motorhome does not qualify if it is a camper van or trans van, is a truck mounted camper or is a converted vehicle. A converted vehicle is any vehicle which was not originally designed to be a motorhome but has been altered to include such facilities as cooking and sleeping. Panel trucks and buses are common examples. **Converted vehicles are unacceptable.**
3. **18 feet or longer from front to rear bumper.** Any motorhome under 18 feet is not acceptable.

DISCOUNTS AND SURCHARGES

1. **Transfer Discount - 10%** - If you are renewing a claim-free six month or annual policy from any other insurance company, a transfer discount of 10% applies. This discount continues at renewal as long as the policy remains claim free.
To receive this discount, a copy of the existing policy declarations page, renewal notice or I.D. card must accompany the application. If the previous policy has expired for more than 30 days, the transfer discount does not apply.
2. **Single Surcharge - 20%** - If an applicant or operator is single (including divorced, separated, widowed or living apart), a 20% surcharge applies.
3. **Older Motorhome Surcharge**
Model years 1968 - 1977 — 10% Surcharge applies (Homes 11-20 years old)
Model years 1967 and older — 20% Surcharge applies (Homes over 20 years old).
[Please note after 1/1/89 these model years will change by one year.]
For Motorhomes 11 years old and older, include an interior and exterior photo.

ALL REGULAR OPERATORS MUST:

1. Be age 50 or older.
2. Have at least 12 months experience driving a motorhome (not necessarily the insured vehicle).
3. Have a permanent residence and residence telephone number.
4. Own at least 1 other automobile.
5. Have a driving record with no more than 2 minor violations in the past 3 years. **No accidents or major violations accepted.**
6. Possess a valid U.S. driver's license. No international, revoked or suspended licenses accepted.
7. Owner must have owned a motorhome for at least 12 months.

A REGULAR OPERATOR IS ANYONE WHO DRIVES THE MOTORHOME 10% OR MORE OF THE TIME IT IS IN OPERATION.

SIMPLE RATING:

1. Review eligibility criteria listed above.
2. Review Discounts & Surcharges listed above.
3. Use actual cash value of the motorhome as rating base. Submit for approval if you want the rating base to exceed the purchase price. The rating base is the **most** we will pay in the event of a total loss. **Awnings** must be listed under personal effects and **should not** be included in the ACV of the base motorhome. Comprehensive deductible applies to awnings.
4. Determine appropriate package rate and select any optional additional coverages desired.
5. Apply any discounts or surcharges to all coverages.
6. If you have any questions, call us at:
(916) 638-5212, Ext. 570 or 800-777-3030, Ext. 570
Please see Service Tips section before calling.
7. Send applications to:
Progressive Casualty Insurance Company
P.O. Box 2530
Rancho Cordova, CA 95741-2350
8. **All business in this program must be paid in full with the application. Submit the full gross premium with the application. Do not retain commission.**

156

Antigay Insurance Co. Sued

Sought to Exclude Single Males

by Peter Freilberg

A California insurance firm seeking to identify applicants who might get AIDS has been accused in an \$11 million lawsuit of a "crude attempt" to screen out gay men by asking discriminatory questions of single males in "occupations that do not require physical exertion."

As examples of the occupations that a company memorandum said have "provided a disproportionate share of this disease," the firm listed restaurant employees, antique dealers, interior decorators, consultants, florists and "people in the jewelry or fashion business."

The lawsuit, filed May 5 by National Gay Rights Advocates (NGRA) and the Employment Law Center of the Legal Aid Society of San Francisco, charges that the Santa Barbara-based Great Republic Insurance Co. is illegally denying medical insurance to gay men. It was said to be the first major lawsuit challenging the AIDS-related underwriting practices of an insurance company.

"What they're doing," said Ben Schatz, director of NGRA's AIDS Civil Rights Project, "is segregating all applications from single males in stereotypically gay occupations. Their conception of who gay men are is out of some 1940s time warp. They're trying to weed out gay men. We're saying it's illegal under California law."

Great Republic President Bill Pritchett, who sent the memorandum to company agents, could not be reached for comment. Chris Hess, a company spokeswoman, denied that the firm was discriminating against gay men, and said an official statement was being prepared.

In a letter sent by Pritchett to company agents last December, Pritchett said the company, which offers health insurance, was trying to avoid covering "extra-high-risk insureds" such as AIDS patients.

After stating that the company had developed a "profile" of the potential AIDS victim, Pritchett asked agents to give a supplementary questionnaire to

single males engaged in "occupations that do not require physical exertion."

The questionnaire asks whether the applicant has had a weight loss or gain of 10 pounds or more during the past 12 months; experienced any symptoms or complaints or other deviations from good health during the past six months; or has "had, been diagnosed, or treated, or been advised to be tested for any sexually transmitted disease or immune disorder."

An applicant answering "yes" to any of the questions should be rejected for insurance, Pritchett advised his agents.

"These questions," the lawsuit charged, "are so generally stated that virtually no truthful 'special' applicant could deny them all. In effect, then, [the firm] rejects all these applicants."

Peter Groom, a lawyer with the California Department of Insurance, said the company's policy appeared to violate the state law prohibiting discrimination on the basis of sexual orientation

in the availability of insurance.

Groom said that even before the lawsuit was filed, the state agency had told Great Republic that from a brief inspection the guidelines looked like they were discriminatory.

California insurance law, in addition to barring antigay discrimination, prohibits use of the HTLV-3 antibody test to determine insurability. Groom said the department has interpreted this law to even bar companies from asking whether an applicant has taken the test.

The Great Republic lawsuit was filed on behalf of David Hurlbert, a San Francisco gay man who applied for and received medical insurance from Great Republic in October 1985. When Hurlbert reapplied this January, he was asked to answer the supplementary questions. When he refused, Great Republic rejected him.

In addition to an injunction against the policy, the lawsuit seeks damages for the additional insurance expenses Hurlbert incurred elsewhere, as well as \$100,000 for pain and suffering and \$10 million in punitive damages. ●



NGRA's Ben Schatz

LA weekly
3-6, 87

effort.

—reported by Ron Curran

DISCRIMINATION WARS

The title of this item would have been "Women vs. the Insurance Companies and Gays vs. the Auto Club" if it had fit. But here's what's happening:

The National Organization of Women (NOW) filed a lawsuit last week against what it called the "intentional, arbitrary and illegal" discriminatory rate structure of State Farm Insurance. According to NOW, State Farm charges women as much as 65 percent more on health policies than it charges men for the same coverage. The discrepancy was discovered after a NOW member, Estelle Kirsch, was charged \$564 for six months of coverage under a standard policy. She later learned that men are charged only \$345 for the same coverage.

"The rate system should be based on such factors as whether the applicant smokes or drinks, not on gender," says Lisa Foster of the Center for Law in the

Public Interest, which filed the suit. "If we ultimately emerge victorious, it could change the entire California health rate system."

And hot on the heels of a report by a subcommittee of the city Task Force on Family Diversity that cited the Automobile Club of Southern California for "a systematic policy of discrimination against gay and lesbian couples," a delegation of same-sex couples will protest the allegedly discriminatory policies at the club's annual membership meeting on March 9 at the L.A. Hilton.

At the heart of the conflict is a reduced dues rate that charges a member a \$34 annual rate, with the member's "spouse" paying only \$12. (The term "spouse" is not defined by the club.) The task force claims that while the club accepts all opposite-sex applications without verifying their marital status, including those from couples with different last names, "obvious" same-sex applications are denied.

"We will present a list of grievances and suggested bylaw revisions to eliminate the discrimination," says Thomas Coleman, an attorney who also teaches a "Rights of Domestic Partners" class at USC Law School. "Any Auto Club member can attend the meeting if they show their membership card, and it would certainly make an impression if gay and lesbian members showed up to support this cause. If a mainstream corporation like the Auto Club makes this change, it would also have a symbolic effect on the whole system."

—reported by R.C. and Peggy Bush