

## [Landmark Proposition 103 Decision Reached](#)

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On October 6, 2010, the [California Court of Appeal](#) issued a landmark decision involving [Proposition 103](#) insurance rate approval in [MacKay v. Superior Court](#), B220469 & B223772.

The legal issue, as Division Three of the Second Appellate District explained, was whether the approval of a rating factor by the DOI [Department of Insurance] precludes a civil action against the insurer challenging the use of that rating factor.”

In *MacKay*, the plaintiff class sued 21st Century Insurance Company asserting that its use of certain rating factors (persistence and accident verification) was illegal and therefore actionable under [California’s Unfair Competition Law \(“UCL”\), Bus. & Prof. Code § 17200](#).

In a unanimous decision, written by Justice Croskey, the Court held "that the statutory provisions for an administrative process . . . are the exclusive means of challenging an approved rate,” precluding a UCL action and therefore ordered the trial court to enter judgment for 21st Century. Prior to this decision, previous decisions had created uncertainty as to whether insurers, having fully complied with the requirements of Proposition 103 rate approval, could charge approved rates free from subsequent civil challenges.

While [Walker v. Allstate Indemnity Co](#), 77 Cal. App. 4th 750 (2000) held that approved rates could not thereafter be civilly challenged, [Donabedian v. Mercury Ins. Co.](#), 116 Cal. App. 4th 968 (2004) created confusion on this issue.

The *MacKay* decision resolves all prior confusion in declaring that approved rates and rating factors cannot thereafter be civilly challenged.

21st Century Insurance Company was represented in this action by [Kent R. Keller](#), [Steven H. Weinstein](#), [Marina M. Karvelas](#) and [Peter Sindhuphak](#) of [Barger & Wolen](#).