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## Key Win on Appeal for Barger & Wolen Client Virginia Surety

*Credit Refund Rules Adopted at the California Insurance Guarantee Association's  
November 15, 2007 Board Meeting Are Invalid*

Los Angeles, CA – In an administrative proceeding before California Insurance Commissioner Steve Poizner, Barger & Wolen partners [Kent R. Keller](#) and [Stephen C. Klein](#) obtained a key win on appeal for client Virginia Surety against the California Insurance Guarantee Association (CIGA), File No. CIGA-07-1.

In an order that is effective February 12, 2009, California's Insurance Commissioner Steve Poizner has adopted the decision of Administrative Law Judge David R. Harrison declaring "The Credit Refund Rules CIGA Adopted at its November 15, 2007 Board Meeting Were Invalid."

"This decision establishes that CIGA cannot use the claim of discretion to create a forfeiture," Mr. Keller noted. "Insurers that have ceased writing a covered line of insurance, and therefore have an unuseable 'credit,' are entitled to a refund of the credited amount, unless payment of the refund would materially impact CIGA's financial condition."

Among the findings of this decision are that the rules adopted by CIGA were "after the fact, without prior notice or hearing, specifically in response to [Virginia] Surety's refund request." Also, that CIGA "never presented these rules to the Insurance Commissioner for approval" and that CIGA could not lawfully adopt or implement these rules without prior approval of the Insurance Commissioner. So important was this aspect of the decision that the Commissioner has declared it as "**precedential.**"

CIGA's contention that it denied the request of Virginia Surety for a refund under California Insurance Code section 1063.5, in accordance with the 2007 Amendments to that section, was rejected as not having been a reasonable exercise of the discretion granted to CIGA. The decision found that CIGA's interpretation of the amendments resulted in an unfair, "*de facto* forfeiture of assessments credits a member had earned by timely paying its assessments as CIGA called for them." In sum, the administrative law judge found that "CIGA has failed to establish a reasonable basis for its actions consistent with the purposes of the 2007 Amendment."

The end result is that unless CIGA challenges the Commissioner's decision in court, Virginia Surety will receive a refund of its overpayments. Further, CIGA cannot adopt "factors" limiting its discretion to pay refunds with the Commissioner's prior approval.

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### **About Barger & Wolen.**

Barger & Wolen is a Los Angeles-based law firm best known for its representation of insurance and reinsurance companies. The firm's practice encompasses a full range of legal services, including corporate and transactional, insurance regulatory, litigation and reinsurance. Since its inception in 1976, the firm has grown to 75 attorneys, with offices in Los Angeles, San Francisco, Newport Beach, New York and Phoenix.