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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans or Rating Systems of MERCURY CASUALTY COMPANY, MERCURY INSURANCE COMPANY, and CALIFORNIA AUTOMOBILE INSURANCE COMPANY, Respondents.	**NOTICE OF NONCOMPLIANCE AND ORDER TO SHOW CAUSE** Insurance Code sections 1858.1 *et seq.* File No. NC-2010-00002

TO: MERCURY CASUALTY COMPANY, MERCURY INSURANCE COMPANY, CALIFORNIA AUTOMOBILE INSURANCE COMPANY, AND TO THEIR ATTORNEY(S) OF RECORD:

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California ("the Commissioner") has good cause to believe that the rating and underwriting practices of Mercury Casualty Company (MCC), Mercury Insurance Company (MIC), and California Automobile Insurance Company (CAIC) (collectively, "the Respondents" or "Mercury"), are in violation of various provisions of California law including, but not limited to, California Insurance Code sections 332, 677.2(c), 791.10(e), 1857, 1861.01(c), 1861.02(b)(1), 1861.02(b)(2), 1861.025, 1861.03(c)(1), 1861.05(a), 10101, 10102, 11580.07, 11624(e),

11628(c)(1), 11628.5, 11628.7, 11629.77 and California Code of Regulations ("CCR"), Title 10, Chapter 5 , Subchapter 4.7, sections 2360.0(b), 2360.2, 2360.3, 2360.4, 2360.6, 2632.5, 2632.5(c)(1)(A), 2632.5(c)(1)(B), 2632.12(b), 2632.13, 2632.13 (c), 2632.13(f), 2632.13(g), 2632.13(i), 2632.14(a)(1), 2632.14(a)(2), 2632.14(a)(3), 2632.14(b), 2632.19(f), CAARP Plan of Operations sections 24.F.1 and 37.6 and the California Low Cost Automobile Insurance Plan Manual. The nature and extent of the Respondents' noncompliance is set forth below. The California Department of Insurance ("the Department") is informed and believes, and thereon alleges, the following:

1. The Respondents currently are, and at all times relevant hereto were, insurers licensed to transact various classes of insurance in California including, but not limited to, those classes of insurance discussed below.

2. On or about February 18, 2010, following a field examination of the Respondents, the Commissioner adopted a Report of Examination of the Rating and Underwriting Practices of the Mercury Insurance Group ("the Report"). The Report covered the period of March 1, 2007 through May 31, 2007. The Report is attached hereto as "EXHIBIT 1" and is incorporated by reference herein. The Report documents that all of the violations, which are set forth below as instances of non-compliance, were underwriting practices of the Respondents on May 31, 2007. The Report documents that all of the violations, which are set forth below as instances of non-compliance, were underwriting practices of the Respondents on May 31, 2007. At or about the time the Report was issued, the Commissioner informed the Respondents that their rates, rating plans or rating systems, as set forth below, were in non-compliance with California law. At the same time, the Commissioner told the Respondents to bring their rates, rating plans or rating systems into compliance with California law.

NONCOMPLIANCE No. 1

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile
Homeowners
Commercial Automobile
Commercial Multi-Peril

3. Mercury has continued to engage in noncompliant practices despite criticism by the Field Rating and Underwriting Bureau (FRUB) in its past examinations. The prior exams were conducted in 1998 and 2002. In three instances, the Respondents have not taken corrective action, and thus those issues have remained unresolved. In four instances, the Respondents agreed as part of one of the earlier examinations to modify their practice to comply with California law, but upon subsequent examination it was determined that Mercury failed to implement any corrective action. In six instances, the Respondents agreed to discontinue a noncompliant practice in one of the prior examinations, but the current 2007 examination showed that instead Mercury slightly modified the practice while maintaining the noncompliant feature that had been identified in the past. Finally, in one instance, Mercury had an unresolved issue in a prior examination that carried over to the current examination. Six of the overall instances of repeat violation involved Mercury's failure to comply with the order issued as a result of the 2006 enforcement action taken by the Department.

NONCOMPLIANCE No. 2

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

4. The Respondents' PPA application forms do not request the information necessary to determine accident chargeability, or if bodily injury was involved. The failure to collect such information creates the potential for an improper accident surcharge, and thus may result in excessive rates. This issue affects every applicant of a PPA insurance policy through Mercury that has an accident on his or her driving record. This is a violation of Section 1861.05(a) of the

California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.13(c).

NONCOMPLIANCE No. 3

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

5. Regarding convictions for alcohol related incidents, hit-and-run, reckless driving, manslaughter, or refusal to submit to an intoximeter test, the referenced Respondents' application forms ask for the applicant's lifetime experience. Requesting information beyond the period of time relevant to the rating of the policy may lead to unfair rating practices. This issue affects every applicant of a PPA insurance policy through Mercury with convictions for alcohol related incidents, hit-and-run, reckless driving, manslaughter, or refusal to submit to an intoximeter test in their experience beyond that relevant to the rating of the policy. This is a violation of Sections 1861.025 and 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.5.

NONCOMPLIANCE No. 4

COMPANIES: Mercury Insurance Company (MIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

6. Mercury Insurance Company renewal offers fail to disclose to insureds that the Mercury Insurance Group also provides automobile insurance policies through Mercury Casualty Company and California Automobile Insurance Company, which provide different coverage options of which the MIC insured may not be aware are available. The failure to consistently offer all programs to all insureds may result in the dissimilar treatment of similar risks, and fails to meet the requirement that a good driver be offered all coverages and options that are available to the public, and the option to select from the insurer of his or her choice. This issue affects

every existing MIC PPA insurance policyholder. A similar criticism was raised in the 2002 examination. At that time, MIC put procedures in place to offer all products to new business, but steps were not taken to address this obligation for renewals. A similar criticism was raised in the 2002 examination, and was included in the enforcement action taken following the examination. Mercury's continued failure to fully disclose the availability of all programs to all eligible risks at renewal violates the terms of the 2006 order that resulted from that action. This is a violation of Sections 1861.02(b)(1) and 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.14(b).

NONCOMPLIANCE No. 5

COMPANIES:	Mercury Insurance Company (MIC)
	Mercury Casualty Company (MCC)
	California Automobile Insurance Company (CAIC)
LINES OF BUSINESS:	Private Passenger Automobile (PPA)

7. Mercury charges for accidents that do not meet the statutory definition of principally at-fault based solely on an insured's Comprehensive Loss and Underwriting Exchange (CLUE) report, without first taking the steps required by CCR § 2632.13, subsections (f), (g), and (i), to determine whether the insurer may charge for those accidents. The practices of charging for accidents which do not meet the statutory definition of principally at-fault, and automatically applying a bodily injury accident surcharge if bodily injury is indicated on an insured's CLUE, report may result in the application of excessive rates. Such excessive rates may be due solely to the application of an improper accident surcharge, or the combination of an improper accident surcharge and the improper removal of the Good Driver discount. This issue affects every applicant of a PPA insurance policy through Mercury that has an accident on his or her CLUE report for which reserves (BI and/or PD) have been established. This criticism was raised in the 1998 and 2002 examinations and has been the subject of consumer complaints. This is a violation of Sections 1861.02(b)(2) and 1861.05(a)of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2632.5(c)(1)(B), 2632.13(c), 2632.13(f),

2632.13(g) and 2632.13(i).

NONCOMPLIANCE No. 6

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

8. When a risk requires a SR22 financial responsibility filing, it is Mercury Insurance Group's practice to apply a 15% surcharge to the liability, medical and uninsured motorist bodily injury portions of the policy premium. This surcharge, however, was not filed with and approved by the Department. Additionally, the application of a surcharge based on a financial responsibility filing is not an allowable rating factor. This practice results in excessive rates. This issue affects every applicant of a PPA insurance policy through Mercury who requires a SR22 financial responsibility filing. This is a violation of Sections 1861.01(c) and 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.5.

NONCOMPLIANCE No. 7

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

9. Mercury's Notice of Non-renewal does not consistently state the specific reason for termination, and rather contains language instructing insureds to write to Mercury for an explanation of the adverse underwriting decision. This issue may potentially affect any Mercury PPA insurance policyholder about whom an adverse underwriting decision is made which results in the nonrenewal of the policy. This issue was identified in the 1998 exam in the PPA and CMP lines of business. The issue was raised again in 2002 in the exam of the HO line of business.

This practice was noted in the current examination as affecting the PPA and HO lines of business. This is a violation of Section 791.10(e) of the California Insurance Code.

NONCOMPLIANCE No. 8

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

10. Mercury's Notice of Non-renewal and Cancellation do not offer a California Good Driver the option to exclude the unacceptable driver in order to continue coverage as written. The Respondents are cancelling and non-renewing Good Drivers for reasons which do not constitute a substantial increase in hazard insured against as defined by current regulations. This issue affects any Mercury PPA insurance Good Driver discount policyholder who has a driver on the policy that becomes ineligible for coverage. Following the 2002 examination, and as part of the 2006 order that resulted from the enforcement action taken with respect to that exam, Mercury agreed to make an offer of acceptability to the consumer via messaging on the cancellation and non-renewal notices. Mercury has placed a message on its notices, however, in practice, this offer of acceptability is only limited to advising the customer that they can reapply for coverage excluding the other operator. Mercury has not fully corrected this issue despite criticisms stemming back to the 1998 examination, and has failed to fully comply with the order of 2006. This is a violation of Sections 1861.02(b)(1), 1861.03(c)(1) and 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.19(f).

NONCOMPLIANCE No. 9

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

11. Mercury requires an insured to carry comprehensive coverage in order to purchase

collision coverage. This rule is contradictory to the provisions of current regulation with respect to California Good Drivers as it prohibits a Good Driver from selecting the coverage options of his or her choice. This issue affects any applicant of a Mercury PPA insurance Good Driver discount policy who wishes to carry collision coverage only on the policy. This is a violation of California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.14(a)(2).

NONCOMPLIANCE No. 10

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

12. Mercury requires individuals insured under both a private passenger auto policy and a commercial auto policy through Mercury to have similar limits on both policies up to 100/300/50. And, if provided by the commercial auto policy, the Uninsured Motorist Bodily Injury limits of the policies must match up to 100/300. This rule prohibits a Good Driver from selecting the coverage limits of his or her choice. This issue affects any applicant of a Mercury PPA insurance Good Driver discount policy who is also insured under a Mercury Commercial Auto (CA) policy, and who wishes to carry liability coverage limits on the policy that are lower than those written for the CA risk. This is a violation of California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2632.14(a)(1) and 2632.14(a)(3).

NONCOMPLIANCE No. 11

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

13. Mercury's Fifteen Plus Program, a sub-program within MIC, MCC, and CAIC tailored for vehicles over fifteen model years old for which physical damage coverage is desired,

includes a rule which requires insureds to carry comprehensive and collision coverages on their policy. This rule is not in compliance California law with respect to all drivers, as Mercury cannot require collision coverage in order to purchase comprehensive coverage, and it places requirements on California Good Drivers that are prohibited by current regulation as it prohibits a Good Driver from selecting the coverage options of his or her choice. This issue affects any Mercury PPA insurance Good Driver discount policyholder who has a vehicle over the age of 15 years, and who wishes to carry comprehensive-only or collision-only on the policy. Mercury has eliminated the Fifteen Plus Program, but the replacement Program remains deficient with respect to the cited code and regulation. This is a violation of Section 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2632.19(f).

NONCOMPLIANCE No. 12

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

14. Mercury's application and guidelines instruct producers to submit risks with medical impairments as non-bound with a description of the impairment, the date the impairment occurred, and a description of any compensating vehicle or sensory equipment that the applicant may have, and indicates that a medical examination may be required. The guidelines also instruct producers to submit non-bound drivers who have been treated for a mental illness or have been confined in a mental institution during the last 10 years. The referenced guidelines do not specify what will be considered by underwriting upon submission, which may result in the dissimilar treatment of similar risks. Further, California law prohibits discrimination against such applicants who hold a valid California Driver's License, and requires compliance with the "take all comers" provision of Proposition 103 for Good Drivers. This issue affects any "impaired" applicant of a Mercury PPA insurance policy. A similar issue was raised in the 1998 examination. At that time,

drivers of this type were generally considered unacceptable and not written. This is a violation of Sections 1861.02(b)(1), 1861.025, 1861.05(a), 11628.5 and 11628.7 of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b) and 2360.2.

NONCOMPLIANCE No. 13

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

15. Non-good drivers who have uncleared "Failures to Appear" for chargeable citations are considered to be ineligible for coverage under a Mercury policy. A failure to appear in court does not bear a substantial relationship to an insured's loss exposure. Use of this as an eligibility criterion is unfair and prevents people who legally qualify for coverage from obtaining it. This issue affects any applicant of a Mercury PPA insurance policy with an uncleared Failure to Appear on his or her driving record. Estimation of frequency of this violation is relatively low. Mercury has not agreed to discontinue using Failures to Appear for eligibility purposes. A similar criticism was made in the 2002 examination. At the time of the 2002 examination, Mercury was observed to be non-renewing policies due to Failures to Appear, and provided explanations of its practices that indicated that Failures to Appear were used in assigning the driving safety record rating factor. This issue was included in the enforcement action that was taken following the 2002 examination. Mercury's use of Failures to Appear for eligibility violates the terms of the 2006 order that resulted from that action. This is a violation of California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b) and 2360.2.

NONCOMPLIANCE No. 14

COMPANIES: Mercury Insurance Company (MIC)

Mercury Casualty Company (MCC)

California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

16. The Respondents preclude from purchasing coverage non-good drivers with a major conviction during the past 5 years in the following occupations: Bartender, Liquor Store Owner, Painter, and Cocktail Waitress/Waiter. Additionally, Artisans are only considered acceptable provided certain criteria are met, and the number of utility vehicles they insure cannot exceed the number of relative residents who are Artisans. Good Drivers are not excluded from the Artisan rule requirements. California law prohibits insurers from using an applicant's occupation for the purposes of eligibility; the practice of doing so allows for the dissimilar treatment of similar risks. Additionally, the above mentioned occupations do not bear a substantial relationship to an insured's loss exposure. Finally, the Artisan rule may preclude someone who meets the statutory Good Driver definition from being able to purchase coverage. This issue affects any non-Good Driver applicant of a Mercury PPA insurance policy within the abovementioned occupations with a major conviction during the past 5 years, and potentially affects Artisan Good Drivers. A similar issue was raised in the 1998 examination. This is a violation of Sections 1861.02(b)(1), 1861.025, 1861.05(a) and 11628(c)(1) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b) and2360.2.

NONCOMPLIANCE No. 15

COMPANIES: Mercury Insurance Company (MIC)

Mercury Casualty Company (MCC)

California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

17. Mercury considers risks in which more than one household resident has a major conviction to be ineligible for coverage, unless all convictions are greater than five years old. The characteristics of a third party household resident do not bear a substantial relationship to the

insured's loss exposure, and thus this practice creates the potential for the unfair treatment of similar risks. This issue affects any applicant of a Mercury PPA insurance policy with a driver in the household who had major conviction less than 5 years ago. This is a violation of Section 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b), 2360.2 and 2632.5(c)(1)(A).

NONCOMPLIANCE No. 16

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

18. Mercury conducts a Person Search on some risks, while not on others, in order to determine if there are additional household residents. This type of search or underwriting vehicle is not mentioned in the Respondents' Agent's and Underwriting Manuals. Increasing the extent to which an insured is underwritten by conducting additional searches without a written rule or guideline in place which defines when and how such underwriting is to transpire allows for the dissimilar treatment of similar risks. (Inconsistency was noted in the application of this process.) This issue could potentially affect any applicant of a Mercury PPA insurance policy. This is a violation of Section 1861.05(a) of the California Insurance Code.

NONCOMPLIANCE No. 17

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

19. The examination of Mercury's PPA line of business identified seven different instances in which Mercury failed to have in place and/or consistently use eligibility guidelines that were specific, objective, and substantially related to the insured's loss exposure. In an

additional instance, Mercury placed further restrictions on resubmissions via its cancellation and nonrenewal notices to producers disallowing such risks until certain criteria, beyond what is permissible by law, are met. The issues of the current report are either repeat criticisms of, or similar criticisms to, those raised in one or both of the two most recent Mercury Insurance Group examinations. Additionally, at least two of the issues were addressed in the enforcement action taken by the Department in 2006. Beyond that, however, Mercury has consistently used improper eligibility guidelines, or been inconsistent in its application of its eligibility guidelines, despite criticism by the Department. Mercury maintains that the Department does not have the statutory authority to limit its ability to underwrite risks, and has demonstrated its position as such through its continued overall noncompliance in this regard. This is a violation of Sections1861.02(b)(1), 1861.025, 1861.05(a), 11628.5 and 11628.7 of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b), 2360.2 and 2632.5(c)(1)(A).

NONCOMPLIANCE No. 18

COMPANIES:	Mercury Insurance Company (MIC)
	Mercury Casualty Company (MCC)
	California Automobile Insurance Company (CAIC)
LINES OF BUSINESS:	Private Passenger Automobile (PPA)

20. The examination of Mercury's PPA line of business identified two practices which result in the improper termination of risks. One, which deals with failure to properly allow exclusions of ineligible operators, is already detailed under Noncompliance No. 8 of this pleading. The other involves CAIC's failure to determine an operator's eligibility for the Low Cost Automobile Insurance Plan within the timeframe outlined in the Plan's manual, but cancelling a policy regardless, upon determining that the operator is ineligible. The practices result in drivers losing coverage that Mercury, by law, should be covering. Similar issues to the issue regarding the improper cancellation and nonrenewal of Good Drivers were raised in the 1998 and 2002 examinations. Following the 2002 examination, the issue was included in the

enforcement action taken against Mercury. This is a violation of Sections 1861.02(b)(1), 1861.03(c)(1) and 11629.77(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2632.12(b) and 2632.19(f), and the California Low Cost Automobile Insurance Plan which states that a low-cost automobile insurance policy issued pursuant to the program shall only be cancelled for the reasons outlined in subsections (a) through (d), Manual § 33.B.1.

NONCOMPLIANCE No. 19

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

21. The examination of Mercury's PPA line of business identified four rating rules which either allow for unfairly discriminatory rating practices, or which place requirements on insureds which are prohibited by current law. In one issue, Mercury requests experience information from applicants for a period beyond that allowed for rating purposes. The remaining three issues place requirements on drivers (Good Drivers and other) regarding coverage limits or options that are prohibited by California law. One issue allows for unfairly discriminatory rating practices by collecting information from drivers that is immaterial to the rating of the policy as outlined in current regulations. The remaining issues place an undue burden on insureds by requiring specific coverage combinations and coverage limits, though code and regulations disallow such requirements. This is a violation of Sections 1861.025, 1861.05(a) and 11580.07 of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2632.5, 2632.14(a)(1), 2632.14(a)(2) and 2632.14(a)(3).

NONCOMPLIANCE No. 20

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)

California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

22. The examination of Mercury's PPA line of business identified five practices that allow for an improper accident surcharge. Two practices are regarding the collection of information related to an accident, two practices involve the charging of one point versus two points for an accident, and the final issue pertains to the charging of accident surcharges based solely on the insured's CLUE report. These practices can result in drivers paying surcharges for accidents and/or losing Good Driver discounts when the drivers in question may not be principally at fault. Similarly, CAARP insureds may pay more due to accidents that are not truly chargeable under the definitions given in the Plan. This is a violation of Sections 1861.02(b)(2), 1861.05(a) and 11624(e) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2632.5(c)(1)(B), 2632.13(c), 2632.13(f), 2632.13(g) and 2632.13(i) and CAARP Plan of Operations § 24.F.1; this manual rule outlines penalty point assignments for accidents.

NONCOMPLIANCE No. 21

COMPANIES: Mercury Insurance Company (MIC)

Mercury Casualty Company (MCC)

California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

23. The examination of Mercury's PPA line of business identified two instances in which Mercury failed to adhere to its filed rating plan. In one instance, Mercury applies a surcharge to policies requiring a SR22 financial responsibility filing, though such a surcharge was not filed with the Department (nor would it be approved, as this is not an allowable rating factor). In the second instance noted, Mercury applies an increased rate to CAARP policies when it determines that there is more than one vehicle in the household without first determining that the increased rate applied. This is a violation of Sections 1861.01(c), 1861.05(a) and 11624(e) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3,

Section 2632.5.

NONCOMPLIANCE No. 22

COMPANIES: Mercury Insurance Company (MIC)
Mercury Casualty Company (MCC)
California Automobile Insurance Company (CAIC)

LINES OF BUSINESS: Private Passenger Automobile (PPA)

24. The examination of the PPA line of business identified two different deficiencies with Mercury's disclosures. First, Mercury does not consistently provide the specific reason for an adverse underwriting decision at the time the decision is made. Second, Mercury's request for underwriting information for a CAARP policy does not include a statement in English and in Spanish that failure to provide the requested information within the timeframe provided may result in additional charges, cancellation, or nonrenewal of the Plan policy. The result of the first issue is that an insured must contact the Company in order to obtain details regarding the termination of the policy. The second issue may result in the up-rating or termination of a policy due to improper disclosure. The issue regarding providing the specific reason for an adverse underwriting decision was raised in the 1998 examination, and was also raised in the current examination in the homeowners' line of business. Additionally, this issue was raised in the homeowners line of business in 2002, and in the commercial multiple peril line of business in 1998. This is a violation of Section 791.10(e) of the California Insurance Code and the CAARP Plan of Operations § 37.6; written notices and renewal questionnaires sent to the applicant or insured and Producer of record requesting information pertinent to the underwriting if the Plan policy or issuance of a renewal policy must include a statement, in both English and Spanish, advising the insured that failure to provide the requested information within the time required may result in additional charges, cancellation, or nonrenewal of the Plan policy.

NONCOMPLIANCE No. 23

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

25. MCC has adopted a rating procedure that is in conflict with its filed rating plan. Instead of applying the filed rating variables for dog-ownership versus no dogs (according to the features of the risk), MCC applies the 1.10 "dogs owned" factor to all risks unless the insured signs an exclusion for dog-related liability losses. This procedure applies whether or not the insured has a dog. The examination report also provides details on how MCC's procedures for offering the opportunity to exclude liability coverage for dogs which, although the procedure itself runs contrary to the approved rating plan, results in potentially misleading or incomplete information regarding the terms of coverage being provided to the insured. Policyholders who do not own dogs are overcharged by 10% if they do not sign the exclusion. As noted, the policy files do not readily document that each applicant was aware of this element of the premium and the ability to exclude the coverage and avoid the charge if so desired. This is a violation of Sections 332, 1861.01(c) and 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.3 and 2360.4.

NONCOMPLIANCE No. 24

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

26. MCC misapplied premium credits for premises alarms and gated community risks. The errors included not applying credits for risks that were eligible, applying credits when risks did not meet the criteria, and failing to maintain documentation required by MCC's underwriting rules to support the credit applied. This is a violation of Sections 1857 and 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2360.6.

NONCOMPLIANCE No. 25

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

27. MCC unfairly limited the ability of insureds in certain occupations to obtain optional higher coverage limits on tools in the more comprehensive Superior program. People in the identified occupations would be required to pay a higher premium for the Standard product with a variety of coverage options added to match the enhanced Superior product if they weren't willing to accept the lower tool sub-limit that applied to them in the Superior program. This is a violation of Section 1861.05(a) of the California Insurance Code.

NONCOMPLIANCE No. 26

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

28. MCC rounded Coverage A limits up to the next highest $1,000 at renewal (after application of the annual inflation factor) for some risks but not all. In addition, risks with Coverage B, C, and D amounts that exceeded the percentages automatically included in the policy form did not preserve their increases at renewal, and in fact, appear to be reduced from the prior year's limit in some cases. Inconsistency results between otherwise similar risks in how they are treated at renewal. Also, reduction in coverage limits not requested by the insured (and of which the insured may not be aware because it is done as part of the renewal) can result in inadequate coverage at the time of loss. This is a violation of Section 1861.05(a) of the California Insurance Code.

NONCOMPLIANCE No. 27

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

29. MCC's notices of cancellation and non-renewal did not state the specific reason for the adverse action. This was previously identified as a problem in the PPA and CMP lines in the 1998 exam. Failing to provide the insured with all information related to why the adverse action was taken prevents consumers from being able to take steps needed to correct deficient aspects of the risk, if possible, to improve chances of being insurable. This is a violation of

Section 791.10(e) of the California Insurance Code.

NONCOMPLIANCE No. 28

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

30. The exam identified three different instances in which MCC failed to have in place and use eligibility guidelines that were objective, specific, and substantially related to the insured's loss exposure. Certain risks were required to be referred to underwriting prior to binding, but no guidelines were in place to then direct how underwriting would determine eligibility. Mercury also had a "catch all" type rule that said that any risk with a combination of objective, non-discriminatory adverse underwriting factors that relate to risk of loss was ineligible. Failure to have appropriate guidelines in place leads to inconsistency in terms of who is accepted for coverage and who is not, and in decisions to non-renew. The result for consumers is a more difficult and uncertain experience in obtaining and maintaining coverage. This is a violation of Section 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b) and 2360.2.

NONCOMPLIANCE No. 29

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Homeowners

31. The exam identified six different instances of MCC failing to consistently follow its established rating or underwriting rules, or failing to have a rating rule in place to provide consistency. The result of MCC's practices is inconsistent treatment of similar risks in terms of rates applied and underwriting decisions, and potential unfair treatment of consumers. This is a violation of Section 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Section 2360.6.

NONCOMPLIANCE No. 30

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Commercial Automobile

32. MCC had no rating rule in place or in its filed rating plan to explain how the rating band would be selected for risks in newly created zip codes. The potential harm resulting from this failure is possible inconsistency in how similar risks are rated. This is a violation of Sections 1861.01(c) and 1861.05(a) of the California Insurance Code.

NONCOMPLIANCE No. 31

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Commercial Multiple-Peril

33. In its Artisan Program, MCC was making a charge of $1 on every policy that included a property damage deductible of $1,000. This charge was not in the filed rating plan and is considered excessive, because the manual rates already contemplate $1,000 as the standard property damage deductible. The company's actions resulted in small amounts collected from individual consumers to which MCC was not entitled. This is a violation of Sections 1861.01(c) and 1861.05(a) of the California Insurance Code.

NONCOMPLIANCE No. 32

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Commercial Auto

Commercial Multiple-Peril

34. The examination identified ***seven*** different ways in which MCC failed to adhere to it's filed and approved commercial lines rating plans:

The multi-policy discount was not being applied to the entire commercial auto policy premium, as required by the rate filing;

The filed Retail BOP program did not include insurance agencies under its list of eligible classifications and did not include rates for this type of exposure, yet risks of this type were being

written. MCC had established that rates for another classification ("offices –NOC") should apply, but did not include this in its filed and approved rating plan;

MCC used the Office and Retail BOP program rates for risks that did not qualify under the filed rating plan, but did so to cover the property exposure only. The BOP rates are composite and contemplate both property and liability exposure in a single rate. An endorsement excluding liability was attached, but no premium adjustment was made to compensate for this reduction in coverage. In addition to failing to adhere to the filing, the rates applied were excessive;

The exam identified ***three*** different coverages being sold for which no rates were included in MCC's filed rating plans – BOP sprinkler leakage, owners & contractors protective liability, and liquor liability in excess of the maximum limits included in the rating plan;

Due to a systems problem Mercury was charging an additional $1 above the filed rates on every Artisans Program policy with a property damage deductible of $1,000.

When an insurer fails to file rates that it is using, the Department loses the ability to oversee the appropriateness of those rates and the overall rate level charged. As a result of MCC's acts, the Department was not able to provide consumers with protection against excessive or inadequate rates, as it was not able to properly evaluate the various rate levels employed by MCC since not all aspects of the rating plans were filed for approval as required. The application of unfiled rates in each of the specific examples cited in the examination report likely occurred with only low or moderate frequency. However, it is evident through the pattern of similar issues noted in a variety of MCC's commercial programs that MCC does not prioritize compliance with prior approval laws in how it conducts business. Since we reviewed a relatively small sample of policy files in our examination (a total of 100 commercial policies in this exam), identifying seven different ways in which the company used rates that had not been filed and approved demonstrates a much higher than would be expected incidence of this type of violation. This is a violation of Sections 1861.01(c) and 1861.05(a) of the California Insurance Code.

NONCOMPLIANCE No. 33

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Commercial Multiple-Peril

35. MCC did not meet its obligation to provide certain required disclosures in a timely manner. Specifically, it did not always allow 30 days advance notice of cancellation, and it failed to provide the Residential Property Insurance Disclosure (RPID) to owners of 1 to 4 unit apartment buildings. Consumers may have had their policies cancelled without adequate advance notice. Apartment building owners did not get the benefit of the coverage descriptions that they are required to receive under the law. This is a violation of Sections 677.2(c), 10101 and 10102 of the California Insurance Code.

NONCOMPLIANCE No. 34

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Commercial Multiple-Peril

Commercial Auto

36. The exam identified ten different instances in which MCC failed to have in place and use eligibility guidelines that were objective, specific, and substantially related to the insured's loss exposure. Failure to have appropriate guidelines in place leads to inconsistency in terms of who is accepted for coverage and who is not, and in decisions to non-renew. The result for consumers is a more difficult and uncertain experience in obtaining and maintaining coverage. This is a violation of Sections 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.0(b) and 2360.2.

NONCOMPLIANCE No. 35

COMPANIES: Mercury Casualty Company

LINES OF BUSINESS: Commercial Multiple-Peril

Commercial Auto

37. The examination identified eight different instances of MCC failing to consistently follow its established rating or underwriting rules, or failing to have a rating rule in place to provide consistency. The result of MCC's practices is inconsistent treatment of similar risks in

terms of rates applied and underwriting decisions, and the failure to always allow each insured the lowest premium that he or she should qualify for. This is a violation of Section 1861.05(a) of the California Insurance Code and California Code of Regulations, Title 10, Chapter 5, Subchapter 3, Sections 2360.3 and 2360.4.

NONCOMPLIANCE PENALTIES

1. RESPONDENTS ARE HEREBY NOTIFIED that all noncompliance referred to herein must be corrected within ten (10) days of receipt of this Notice and proof of such correction, or other response permitted by California Insurance Code section 1858.1, must be presented to the Commissioner by that time.

2. RESPONDENTS ARE FURTHER NOTIFIED that if they fail to make an adequate or timely response, the Commissioner will set a public hearing pursuant to California Insurance Code sections 1858.2 and 1858.3. If, at the conclusion of such hearing, the Commissioner finds that the facts are as set forth above and that such facts constitute violations of the applicable sections of the California Insurance Code and the California Code of Regulations, as set forth above, he may issue an order for the payment of civil penalties and such other corrective action as he may deem appropriate.

3. RESPONDENTS ARE FURTHER NOTIFIED that the Commissioner is informed and believes that the Respondents have engaged in at least one willful act involving the use of rates, rating plans or rating systems in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code. Pursuant to California Insurance Code sections 1858.07 and 1858.3, the Commissioner shall determine the total number of willful acts committed by the Respondents and shall impose the penalty imposed by section 1858.07. The Commissioner reserves the right to amend this Notice to set forth additional willful acts in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code and the Commissioner reserves the right to seek additional penalties therefore in an amount not to exceed $10,000.00 for each such act.

4. RESPONDENTS ARE FURTHER NOTIFIED that, alternatively, in the event that the aforesaid acts involving the use of rates, rating plans or rating systems in violation of Chapter

9, Part 2, Division 1 of the California Insurance Code are not found to be willful violations of said Chapter, then pursuant to Insurance Code Section 1858.07, the Commissioner will seek the imposition of civil penalties in an amount not to exceed $5,000.00 for each such act. The Commissioner reserves the right to amend this Notice to set forth additional acts in violation of Chapter 9, Part 2, Division 1 of the California Insurance Code and the Commissioner reserves the right to seek additional penalties therefore in the amount of $5,000.00 for each such act. The Commissioner further reserves the right to seek any other penalties provided for under California Insurance Code section 1858.07 in the event that the act set forth above, or such acts as may be alleged upon amendment hereof, were inadvertent.

5. RESPONDENTS ARE FURTHER NOTIFIED that the Commissioner has alleged continuing violations of a previous final order of the Commissioner. Pursuant to California Insurance Code section 1859.1, Respondents are liable for an additional amount not to exceed $250,000 for their failure to comply.

6. RESPONDENTS ARE FURTHER NOTIFIED that the Commissioner has alleged continuing violations of a previous final order of the Commissioner and will seek suspension or revocation, in whole or in part, of Respondents' Certificates of Authority, pursuant to California Insurance Code section 1858.4.

ORDER TO SHOW CAUSE

1. WHEREAS, the Commissioner has reason to believe, based upon the facts set forth above, that Respondents have used or are using rates, rating plans or rating systems in this State that are not in compliance with the California Insurance Code sections and/or the Regulations set forth above;

2. THEREFORE, the Department hereby notifies Respondents that a hearing shall be held at a time and place to be determined by the Department which shall not be fewer than 30 days after service of the herein Order to Show Cause to determine whether the alleged rates, rating plans or rating systems set forth herein should be declared to be noncompliant and whether the Commissioner should issue an Order to pay the penalties imposed by Insurance Code sections 1858.07, 1858.3 and 1859.1, and to cease and desist from use of such rates, rating plans or rating

systems.

WHEREFORE, the Department prays for the following:

1. An Order to Cease and Desist against Respondents from using such rates, rating plans or rating systems;

2. The imposition of civil penalties as provided by law, pursuant to Insurance Code section 1858.07, of up to $5,000.00 for each non-willful act of noncompliance alleged above that is established, and a penalty of up to $10,000.00 for each willful act of noncompliance alleged above that is established according to proof;

3. In addition, the imposition of monetary penalties as provided by law, pursuant to Insurance Code section 1858.3, of up to $10,000.00 for each day of noncompliance alleged above that is established according to proof;

4. The imposition of a penalty not to exceed $250,000 for Respondents' violation of a previous final order of the Commissioner, pursuant to California Insurance Code section 1859.1.

5. The suspension or revocation of Respondents' Certificates of Authority for Respondents' violation of a previous final order of the Commissioner, pursuant to California Insurance Code section 1858.4.

6. The imposition of such other equitable relief, including restitution, as may be necessary to redress Respondents' violations as set forth above; and

7. The imposition of such further relief as may be just and proper.

Dated: April 9th, 2010

STEVE POIZNER
Insurance Commissioner

By

JERRY L. WHITFIELD
Assistant Chief Counsel