

1 **BEFORE THE INSURANCE COMMISSIONER**  
2 **OF THE STATE OF CALIFORNIA**  
3 **San Francisco**

4 In the Matter of )  
5 **FIRST MERCURY INSURANCE COMPANY,** ) **ORDER TO CEASE**  
6 **COVERX CORPORATION,** ) **AND DESIST**  
7 **DBA COVERX INSURANCE SERVICES,** ) **INSURANCE CODE**  
8 and, ) **SECTION 12921.8**  
9 **FIRST MERCURY EMERALD INSURANCE** ) **File No. 08OC07663-AP**  
10 **SERVICES, INC.,** ) **File No. 08OC04603-AP**  
11 Respondents. ) **File No. 09OC00884-AP**

12  
13 TO: FIRST MERCURY INSURANCE COMPANY, 29621 NORTHWESTERN  
14 HIGHWAY, SOUTHFIELD, MICHIGAN, 48034, its officers, directors, employees, trustees,  
15 agents, affiliates and service representatives; and,

16 COVERX CORPORATION DBA COVERX INSURANCE SERVICES, 3240 EL  
17 CAMINO REAL, SUITE 110, IRVINE, CALIFORNIA, 92602, its officers, directors, employees,  
18 trustees, agents, affiliates and service representatives; and,

19 FIRST MERCURY EMERALD INSURANCE SERVICES, INC., 777 SOUTH  
20 FIGUEROA STREET, #395, LOS ANGELES, CALIFORNIA, 90017, its officers, directors,  
21 employees, trustees, agents, affiliates and service representatives.

22 WHEREAS, CoverX Corporation dba CoverX Insurance Services, was from June 7, 1979,  
23 and now is, the holder of a license issued by the Insurance Commissioner of the State of  
24 California to act as a Fire and Casualty Broker-Agent (License No. 0573926); and,

25 WHEREAS, First Mercury Emerald Insurance Services, Inc. ("Emerald"), was from  
26 February 21, 2009, and now is, the holder of a license issued by the Insurance Commissioner of  
27 the State of California to act as a Fire and Casualty Broker-Agent (License No. 0G00727); and,  
28

1 WHEREAS, California Insurance Code Section 12921.8(a)(2) authorizes the Insurance  
2 Commissioner to issue a cease and desist order against any person who aided or abetted a person  
3 who has acted in a capacity for which a license, registration, or certificate of authority from the  
4 Insurance Commissioner was required but not possessed; and,

5 WHEREAS, California Insurance Code Section 12921.8(c) authorizes the Insurance  
6 Commissioner to issue said cease and desist order without holding a hearing prior to issuance of  
7 the order; and,

8 WHEREAS, First Mercury Insurance Company, a nonadmitted insurer, through CoverX  
9 Corporation dba CoverX Insurance Services, its managing general agent, has established a  
10 physical presence in California and has transacted the business of insurance in the state, including  
11 but not limited to underwriting, and has placed surplus line insurance with residents of the State  
12 of California, without holding either the requisite licenses or certificate of authority or  
13 authorization, in violation of California Insurance Code section 700; and,

14 WHEREAS, a General Agency Agreement by and between First Mercury Insurance  
15 Company, an Illinois insurance corporation (the "Company"), and CoverX Corporation, a  
16 Michigan corporation (the "Agent"), was entered into on or about December 16, 1997 and  
17 amended from time to time, provides in part:

18 SECTION FIVE  
19 GENERAL DUTIES OF COMPANY

20 The Company will:

- 21 A. Procure and maintain licenses and/or certificates of authority and/or  
22 eligibility as an insurance company in such states as the Company shall  
23 deem necessary to the fulfillment of this Agreement.
- 24 B. Make and maintain such filings as the Company shall deem necessary to  
25 the fulfillment of this Agreement.

26 SECTION SIX  
27 GENERAL DUTIES OF AGENT

28 The Agent will:

- A. Appoint such agents or representatives of the Company and make such  
agreements with them as the Agent deems desirable for the furtherance of  
this Agreement.

- 1 B. Supervise, direct and implement the production, underwriting, premium  
2 collection, accounting and other work necessary or incidental to the  
3 insurance business written under this Agreement.
- 4 C. Establish and maintain such books and records in the manner and as  
5 required by the Company to record the transactions pursuant to this  
6 Agreement.
- 7 D. Furnish, render and provide all services and facilities for the business it  
8 transacts, as are customarily furnished, rendered and provided for insurance  
9 companies for the business written hereunder.
- 10 E. Cancel policies, contracts or certificates for cause.

11 WHEREAS, a Producer Agreement by and between CoverX Corporation, a Michigan  
12 corporation (“CoverX”), and First Mercury Emerald Insurance Services, Inc., an Illinois  
13 corporation (the “Agent”), was entered into about December 2008 and wherein “CoverX has full  
14 and complete authority to enter into this agreement on its own behalf and on behalf of First  
15 Mercury,” provides in part:

16 SECTION SIX  
17 GENERAL DUTIES OF AGENT

18 The Agent will:

- 19 A. Procure and maintain licenses and/or eligibility as an insurance producer in  
20 such states as are necessary to the fulfillment of this Agreement.
- 21 B. Appoint agents or representatives and make such agreements with them as  
22 the Agent deems desirable for the furtherance of this Agreement.
- 23 C. Supervise, direct and implement the production, underwriting, premium  
24 collection, accounting and other work necessary or incidental to the  
25 insurance business written under this Agreement.
- 26 D. Establish and maintain such books and records in the manner and as  
27 required by CoverX to record the transactions pursuant to this Agreement.
- 28 E. Furnish, render and provide all services and facilities for the business it  
transacts, as are customarily furnished, rendered and provided for insurance  
companies for the business written hereunder.
- F. Cancel policies, contracts or certificates for cause.
- G. The Agent will follow industry standards and practices to immediately  
forward all claims, claim information and incident reports to CoverX.  
Agent acknowledges that claim handling and settlement shall be under the  
sole charge and responsibility of First Mercury, and that Agent has no  
authority to settle or adjust claims.

1           WHEREAS, CoverX Corporation has aided and abetted First Mercury Insurance  
2 Company, an entity not licensed to transact the business of insurance in California, to transact  
3 insurance with residents of the State of California, in violation of California Insurance Code  
4 section 703; and,

5           WHEREAS, Emerald through the Producer Agreement with CoverX, entered into by  
6 CoverX on its own behalf and that of First Mercury Insurance Company, has aided and abetted  
7 First Mercury Insurance Company, an entity not licensed to transact the business of insurance in  
8 California, to transact insurance with residents of the State of California, in violation of California  
9 Insurance Code section 703; and,

10           WHEREAS, CoverX Corporation has been engaged in the unlawful activity set forth  
11 herein most recently from about 2006 to the present; and,

12           WHEREAS, Emerald has been engaged in the unlawful activity set forth herein most  
13 recently from about 2008 to the present; and,

14           WHEREAS, First Mercury Insurance Company is not now or has even been licensed by  
15 the Insurance Commissioner to transact an insurance business as an insurer, and has been engaged  
16 in the unlawful activity set forth herein most recently from about 2006 to the present;

17           NOW THEREFORE, FIRST MERCURY INSURANCE COMPANY IS HEREBY  
18 ORDERED to immediately CEASE AND DESIST transacting the business of insurance in the  
19 state, including but not limited to underwriting, placing surplus line insurance with the residents  
20 of this State, through any means; and,

21           NOW THEREFORE, COVERX CORPORATION IS HEREBY ORDERED to  
22 immediately CEASE AND DESIST transacting the business of insurance except for that which it  
23 is licensed. CoverX Corporation may not act as a managing general agent or perform  
24 underwriting for a nonadmitted insurer; and,

25           NOW THEREFORE, FIRST EMERALD INSURANCE SERVICES, INC. IS HEREBY  
26 ORDERED to immediately CEASE AND DESIST transacting the business of insurance except  
27 for that which it is licensed. Emerald may not act through CoverX or on its own as a managing  
28 general agent or perform underwriting for a nonadmitted insurer; and,

1 PLEASE TAKE NOTICE that the Insurance Commissioner may, pursuant to Insurance  
2 Code Section 12921.8, impose a monetary penalty of five times the amount of money received by  
3 any of you while acting in the capacity for which a license, registration or certificate of authority  
4 was required but not possessed, or five thousand dollars (\$5,000) for each day any of you has  
5 acted in the capacity for which a license, registration or certificate of authority was required but  
6 not possessed; whichever is greater.

7 **HEARING**

8 Insurance Code Section 12921.8(c) provides in part, as follows:

9 "A person to whom a cease and desist order . . . is  
10 issued, may, within seven days after service of the  
11 order, . . . request a hearing by filing a request for a  
hearing with the commissioner."

12 If a hearing in this matter is desired, a written request for a hearing must be received  
13 within seven days after personal service of the order. The seven days begins to run on the day  
14 after the day service is effectuated, and if the seventh day falls on a weekend, the period in which  
15 the request must be filed is extended until Monday or the next business day if Monday is  
16 a holiday. The written request for a hearing must be directed to: Jerry L. Whitfield, Assistant  
17 Chief Counsel, California Department of Insurance, 45 Fremont Street, 21st Floor,  
18 San Francisco, California 94105.

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20  
21 IN WITNESS WHEREOF, I have set my hand and affixed my official seal this  
22 \_\_\_13\_\_\_ day of October, 2009.

23  
24 STEVE POIZNER  
Insurance Commissioner

25 By: /s/

26 JERRY L. WHITFIELD  
27 Assistant Chief Counsel  
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