

1 CALIFORNIA DEPARTMENT OF INSURANCE
Rate Enforcement Bureau
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8 **BEFORE THE INSURANCE COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

10
11 In the Matter of the Rates, Rating Plans, or
Rating Systems of

12 MERCURY CASUALTY
13 COMPANY, MERCURY
14 INSURANCE COMPANY, and
CALIFORNIA AUTOMOBILE
15 INSURANCE COMPANY,

16 Respondents.

File No. NC05048356

FIRST AMENDED NOTICE OF
NONCOMPLIANCE
[INSURANCE CODE §1858.1]

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

20 YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of
21 California (the "Commissioner") has good cause to believe that your rating and underwriting
22 practices violate various provisions of California law including, but not limited to, California
23 Insurance Code ("CIC") §§1861.01(c), 1861.02(a)(4), 1861.05(a-b) and Title 10 of the California
24 Code of Regulations ("CCR") §§2632.5(d) and 2632.10. The nature and extent of each allegation
25 is set forth below.

1 **A. GENERAL ALLEGATIONS**

2 1) Respondents, Mercury Casualty Company, Mercury Insurance Company, California
3 Automobile Insurance Company (collectively, "Respondents") are, and at all relevant times were,
4 licensed by the California Department of Insurance ("Department") to transact the business of
5 insurance in the State of California.

6 2) Respondents are members of the Mercury Insurance Group of insurance companies,
7 NAIC Number 0660 (the "Mercury Group").

8 3) Respondents transact, and at all relevant times transacted, the business of insurance in
9 California on risks or lines subject to the California Insurance Code and the California Code of
10 Regulations.

11 4) Since at least 1997, each Respondent company has had approved class plans on file
12 with the Department that include an optional rating factor for the marital status of the rated driver
13 (See Exhibit 1). None of these class plans classifies married persons according to their living
14 arrangements.

15 5) In reviewing approved rate filings of each Respondent company going back to 1996,
16 the Department is not aware of any rate filing that includes a rule that specifies living
17 arrangements for married persons.

18 6) On or about December 20, 2005, the Commissioner approved Mercury Casualty
19 Company's class plan (CDI file No. 05-7959), Mercury Insurance' Company's class plan (CDI file
20 No. 05-7960), and California Automobile Insurance Company's class plan (CDI file No. 05-
21 7957), under which each is currently authorized to operate (See Exhibit 2: Class Plan Application
22 cover sheet for each Respondent and Underwriting Guidelines for the Mercury Insurance Group,
23 filed together and dated 11/7/2005). None of these class plans classifies married persons
24 according to their living arrangements. Nor do they contain underwriting rules that specify living
25 arrangements for married persons (Exhibit 2 Underwriting Guidelines, dated 11/07/2005).

26 7) All acts, practices and violations alleged herein occurred on or after the effective date
27 of California Proposition 103.
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1 **B. APPLICABLE LAW**

2 8) CIC §1861.01(c) provides that insurance rates subject to Division 1, Part 2, Chapter 9
3 must be approved by the Commissioner prior to their use.

4 9) CIC §1861.02(a)(4) provides that the use of any criterion to determine rates without
5 approval constitutes unfair discrimination.

6 10) CIC §1861.05(a) provides that no rate shall remain in effect which is excessive,
7 inadequate, or unfairly discriminatory or otherwise in violation of Chapter 9.

8 11) CIC §1861.05(b) provides that every insurer who desires to change any rate shall file
9 a complete rate application with the Commissioner.

10 12) CIC §1858(a) provides that any person aggrieved by any rate charged, rating plan,
11 rating system or underwriting rule may file a written complaint with the Commissioner,
12 requesting the Commissioner's review thereof.

13 13) CIC §1858.07 provides that any person who uses any rate, rating plan or rating
14 system in violation of Chapter 9 is subject to a civil penalty not to exceed \$5,000 for each act, or
15 if the act was willful, a penalty not to exceed \$10,000 for each act.

16 14) 10 CCR §2632.5(d) provides that an insurer's class plan and rates and premiums
17 determined accordingly may use "marital status of the rated driver" as an optional rating factor.

18 15) 10 CCR §2632.10 provides that no insurer may use an unapproved class plan or
19 charge a premium or sell or renew a policy of automobile insurance which is not calculated in
20 accordance with an approved class plan.

21 16) 10 CCR §2632.15 provides that insurer's shall collect and retain data to support the
22 use of rating factors and further identifies "marital status" as "legally married, single, or widowed
23 only."

1 **C. THE TRUJILLO COMPLAINT**

2 17) From about August 5, 1996 through May 9, 2005, James and Mary Trujillo ("the
3 Trujillos") maintained an automobile insurance policy (# AP 05072315) with Mercury Casualty
4 Company ("the Trujillo Policy"). On or around March 23, 1999, the policy number was changed
5 to AP 05170006.

6 18) During all relevant times, the Trujillos were married to each other.

7 19) During all relevant times, the Trujillos shared a primary residence at -----
8 -----.

9 20) Based upon the Trujillo's living arrangements due to work obligations, Mercury
10 Casualty Company did not rate the Trujillos as married from around November 7, 1997 through
11 around May 9, 2005. Instead, they were rated single at a higher premium.

12 21) On or around January 2005, the Trujillos filed a complaint pursuant to CIC §1858
13 (CDI File No. RUS-6071257), alleging that Mercury Casualty Company rated the married couple
14 as single, in violation of Chapter 9 (See Exhibit 3).

15 22) After conducting an investigation, in which Mercury Casualty Company responded to
16 the Trujillo's complaint (See Exhibit 4), the Commissioner determined that there was probable
17 cause to believe that Respondents committed violations of Chapter 9 of the Insurance Code. The
18 Commissioner communicated his findings to Mercury Casualty Company and requested that it
19 update its rate filing in a letter, dated July 14, 2005 (See Exhibit 5).

20 23) One month later, each of the Respondent companies filed class plans that state in
21 their underwriting guidelines, "**Husband and Wife** must reside in the same dwelling unit to
22 qualify for a married class. Objective evidence may be required to substantiate marital status."
23 (Exhibit 6 Underwriting Guidelines, dated 8/01/2005). The Commissioner has not approved any
24 of these class plans, which include Mercury Casualty Company's class plan, CDI file No.05-6403;
25 Mercury Insurance Company's class plan, CDI file No.05-6404; and California Automobile
26 Insurance Company's class plan, CDI file No. 05-6402 (See Exhibit 6: Class Plan Application
27 cover sheet for each Respondent and Underwriting Guidelines for the Mercury Insurance Group,
28 filed together and dated 8/1/2005).

1 **D. RESPONDENTS USED UNAPPROVED RATING FACTORS**
2 **AND/OR UNAPPROVED RATING RULES IN THEIR PRIVATE**
3 **PASSENGER AUTOMOBILE LINES**

4 24) Respondents failed to obtain approval from the Commissioner before adopting and
5 applying rating factors and/or rating rules in private passenger automobile lines as required by
6 CIC §§1861.01(c), 1861.05(a-b) and CCR §§2632.5(d) and 2632.10.

7 25) Respondents have maintained and regularly applied rating factors and/or rating rules
8 related to marital status, without obtaining the Commissioner's approval at least since 1997.
9 Specifically, Respondents have maintained and applied rating factors and/or rating rules related to
10 the living arrangements of married persons, in violation of CIC §§1861.01(c), 1861.05(a-b) and
11 CCR §§2632.5(d) and 2632.10.

12 26) In every instance in which Respondents applied the foregoing unapproved rating
13 factors and/or rating rules to a policyholder, Respondents violated CIC §§1861.01(c), 1861.05(a-
14 b) and CCR §§2632.5(d) and 2632.10.

15 **E. RESPONDENTS' USE OF UNAPPROVED AUTO RATING**
16 **FACTORS AND/OR UNAPPROVED RATING RULES IS**
17 **UNFAIRLY DISCRIMINATORY**

18 27) Respondents' failed to obtain approval from the Commissioner before using certain
19 criteria as required by CIC §§1861.02 (a)(4) and 1861.05(a-b).

20 28) Respondents have maintained and regularly applied criteria related to the rating of
21 married persons without obtaining the Commissioner's approval. Specifically, Respondents have
22 used criteria requiring policyholders who are married to reside together in order to qualify as
23 married persons, in violation of CIC §§1861.02 (a)(4) and 1861.05(a-b).

24 29) In every instance in which Respondents applied the foregoing unapproved criteria to
25 a policyholder, Respondents violated CIC §§1861.05(a-b) and 1861.02 (a)(4), which states in
26 regard to determination of rates, "Notwithstanding any other provision of law, the use of any
27 criterion without approval shall constitute unfair discrimination."
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1 **F. RELIEF REQUESTED**

2 30) RESPONDENTS ARE HEREBY NOTIFIED that, within ten (10) days of receipt of
3 this notice, Respondents must correct each of the above violations and provide proof of
4 correction, or otherwise respond to this notice as permitted by CIC §1858.1.

5 31) RESPONDENTS ARE FURTHER NOTIFIED that if Respondents fail to respond to
6 this notice within the time specified in the preceding paragraph, a public hearing will be set
7 pursuant to CIC §§1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner
8 finds that the facts and violations set forth above have occurred, he may issue an order for
9 payment of monetary penalties, restitution of overcharges and/or any other corrective action as he
10 deems necessary and proper.

11 32) RESPONDENTS ARE FURTHER NOTIFIED that each and every violation alleged
12 in this Notice constitutes an “act,” under CIC §1858.07, by one or more of the Respondents. The
13 Commissioner reserves the right to amend this Notice to set forth additional violations and acts as
14 they become known.

15 33) RESPONDENTS ARE FURTHER NOTIFIED that under CIC §1858.07, the
16 Commissioner will seek civil penalties up to \$10,000.00 for each act, if the violations referred to
17 above constitute willful acts involving the use of rates, rating plans, and/or rating systems in
18 violation of Chapter 9, Part 2, Division 1 of the California Insurance Code.

19 34) RESPONDENTS ARE FURTHER NOTIFIED that, under CIC §1858.07, the
20 Commissioner will seek civil penalties up to \$5,000.00 for each non-willful act, if the violations
21 referred to above involve the use of rates, rating plans, and/or rating systems in violation of
22 Chapter 9, Part 2, Division 1 of the California Insurance Code.

23 35) The Commissioner further reserves the right to seek any other penalties provided for
24 under California Insurance Code §§1858.07 or 1858.3 for the above described violations.

25 Dated: April 6, 2006

CALIFORNIA DEPARTMENT OF INSURANCE

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By _____/s/
Lisbeth Landsman-Smith
Staff Counsel