

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of  
MERCURY INSURANCE COMPANY,  
Respondent.

File No. SF 04041586-A  
OAH No. N2005050516  
STIPULATION AND WAIVER

Respondent Mercury Insurance Company (“Respondent”) and the California Department of Insurance (“Department”) stipulate as follows:

WHEREAS, Respondent (and its affiliates within the Mercury Insurance Group, Mercury Casualty Company and California Automobile Insurance Company) currently is, and at all times relevant hereto was, an insurer licensed to conduct various classes of insurance in California and was conducting insurance business in California; and,

WHEREAS, on May 26, 2005, the Department issued an “Order to Show Cause and Statement of Charges; Notice of Monetary Penalty (“the OSC”) under file number SF 04041586-A and,

WHEREAS, Respondent has denied, and continues to deny, the allegations of the OSC, but acknowledges that those allegations, if proven to be true, may constitute grounds for the Commissioner to impose a civil penalty and issue an order to Respondent to cease and desist from engaging in those methods, acts, or practices found to be unfair or deceptive pursuant to the provisions of the Insurance Code of the State of California; and

WHEREAS, the Department and Respondent has discussed Respondent’s response to the complaints received and Respondent’s compliance with certain provisions of the Code and the Department’s regulations; and,

WHEREAS, Respondent has implemented various measures to ensure compliance with the Code and Regulations; and,

WHEREAS, the Department and Respondent believe that it is in the public interest to resolve all matters raised in the OSC without the need for a formal hearing or any further administrative action; now,

THEREFORE, with respect to the matters stated herein, Respondent and the Department agree as follows:

A. Respondent waives its right to a hearing and any and all rights that Respondent may be entitled to pursuant to Chapter 5, Part 1, Division 3, Title 2 of the California Government Code.

B. Respondent agrees that in lieu of disciplinary action against its Certificates of Authority, the Commissioner, by his written order to be made and filed herein, and without further notice to Respondent, orders that Respondent cease and desist from engaging in any such methods, acts or practices as are violative of Insurance Code Section 790.03 (h) (5) and the Fair Claims Settlement Practices Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.), including, but not limited to, unreasonably adjusting the labor rate paid to the body shop to repair the vehicle in settlement of claims.

C. Respondent further agrees that it will comply with all Code and Regulation sections concerning Labor Rate Surveys and implement any additional internal policies as are necessary to ensure compliance with the same.

D. Respondent further agrees that in lieu of disciplinary action against its Certificate of Authority, and in resolution of the Department's claims under California Insurance Code Sections 704, 790.03 and 790.035, Respondent shall pay the sum of \$9,000.00 to the State of California within thirty (30) days of receipt of an invoice from the Department. Payment shall be mailed to California Department of Insurance, Division of Accounting, 300 Capital Mall, 13<sup>th</sup> Floor, Sacramento, CA 95814.

E. Respondent acknowledges that, if it violates any of the terms or conditions of this Stipulation and Waiver, the Insurance Commissioner may bring disciplinary action against Respondent, including, but not limited to, those remedies set forth in California Insurance Code Section 790 et seq.

F. Respondent acknowledges that, insofar as the future application of Section 790.07 of the California Insurance Code is concerned, the Order provided for herein shall have the same force and effect as if imposed after a hearing held pursuant to Section 790.05 of the California Insurance Code.

G. Respondent and Department agree that this Stipulation and Waiver represents a complete resolution of the issues raised in the OSC referenced above and no further action will be brought against Respondent or its affiliates, Mercury Casualty Company and California Automobile Insurance Company, for similar incidents that pre-date 30 days from the date of the approval of this agreement by the Commissioner, by which time Respondent and its affiliates will file with the Commissioner the applicable Labor Rate Surveys.

H. Respondent acknowledges that this Stipulation and Waiver is a public record under California Government Code Section 11517(d), and that it and any order issued pursuant thereto is accessible to the public pursuant to California Public Records Act, California Government Code Section 6250 et seq. Pursuant to California Insurance Code Section 12968 the Stipulation will also be posted on the Department's internet web site.

I. Respondent acknowledges that California Insurance Code Section 12921 requires the Insurance Commissioner to approve the final settlement of this matter, and that both the settlement terms and conditions contained herein and the acceptance of those terms and conditions are contingent upon the Commissioner's personal approval.

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J. If any amendments or changes, including complete withdrawal, are made to any statute and/or regulation forming the basis of this action, Respondent shall immediately modify its procedures to comply with such amendments or changes.

Dated: 12/20/2005

Mercury Insurance Company

By: \_\_\_\_\_ /s/  
Gabriel Tirador  
President

Dated: 12/27/2005

California Department of Insurance

By: \_\_\_\_\_ /s/  
Teresa R. Campbell  
Staff Counsel