

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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6

7 Attorneys for The California Department of Insurance
BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

8 In the Matter of

9
10 MERCURY INSURANCE
COMPANY,

11 MERCURY CASUALTY
COMPANY, AND

12 CALIFORNIA AUTOMOBILE
13 INSURANCE COMPANY,

14 Respondents.

File No. NC-03027545

SECOND AMENDED:

NOTICE OF NONCOMPLIANCE
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 1858.1

ORDER TO SHOW CAUSE, STATEMENT
OF CHARGES, AND NOTICE OF HEARING
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 790.035/790.05

ACCUSATION PURSUANT TO
CALIFORNIA INSURANCE CODE
SECTION 704

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19 TO: MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY, and
20 CALIFORNIA AUTOMOBILE INSURANCE COMPANY:
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22 NOTICE OF NONCOMPLIANCE PURSUANT TO CALIFORNIA

23 INSURANCE CODE SECTION 1858.1¹

24 YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of
25 California ("Commissioner") has good cause to believe that your rates, rating plans or rating
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¹ All statutory references are to the California Insurance Code, unless otherwise indicated.

1 systems and underwriting rules violate and have violated the California Insurance Code, as
2 described below.

3 1.

4 Respondents at all relevant times have been insurers licensed by the Commissioner to
5 transact insurance in this state. All of Respondents' policies pertinent to this matter are subject to
6 sections 1861.01(c), 1861.03 and 1861.05.

7 2.

8 On June 30, 2000, in the Superior Court for the State of California, County of San
9 Francisco ("Court"), in case no. 313367, Robert Krumme filed a civil complaint under California
10 Business and Professions Code sections 17200 *et seq.* On April 11, 2003, the Court entered
11 Findings of Fact and Conclusions of Law after Trial ("Findings and Conclusions") in favor of
12 Krumme. The following paragraphs of the Findings and Conclusions are incorporated by
13 reference into this Notice and constitute allegations by the Commissioner:

14 Findings of Fact:

15 Incorporated: 1 – 50, 56, 57

16 Not incorporated: 51, 52, 53, 54, 55

17 Conclusions of Law:

18 Incorporated: 1-8, 9 (lines 9 – 15 up until "license."), 10 – 25

19 3.

20 From July 1, 1996, through 2006, Respondents willfully permitted their insurance agents
21 to charge "broker fees" to Respondents' policyholders. In charging these fees, Respondents'
22 agents acted in the course and scope of their agency. Under California law, all payments by
23 policyholders which are a part of the price of insurance, including all sums paid to an insurance
24 agent, are considered premium. Consequently, Respondents constructively received the "broker
25 fees" (i.e. premium) collected by their agents. Respondents did not receive the Commissioner's
26 prior approval to charge or receive the moneys constituting the "broker fees." As a result of
27 permitting its agents to charge and collect the broker fees, Respondents constructively charged
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1 and collected premium in excess of the rates approved for them by the Commissioner, in violation
2 of section 1861.01(c).

3 4.

4 Because Respondents' agents charged broker fees of varying amounts, Respondents
5 insureds were subjected to unfair rate discrimination, in violation of section 1861.05(a).
6 Respondents willfully permitted the rate discrimination to occur.

7 5.

8 The facts alleged in paragraphs 1 – 4 establish that Respondents willfully used a rate,
9 rating plan or rating system in violation of Chapter 9 of Part 2 of Division 1 of the Insurance
10 Code, and provide grounds for a fine of \$10,000 for each policy in which a Respondent permitted
11 a broker fee to be charged by one of its agents, pursuant to section 1858.07(a).

12
13 ORDER TO SHOW CAUSE, STATEMENT OF CHARGES,

14 AND NOTICE OF HEARING PURSUANT TO

15 CALIFORNIA INSURANCE CODE SECTION 790.035/790.05

16 6.

17 From July 1, 1996, through 2006, Respondents published advertisements that compared
18 Respondents' premiums with the premiums of competitors. The advertisements indicated that
19 Respondents' rates were lower than the rates of Respondents' competitors. In the advertisements,
20 Respondents willfully failed to disclose that broker fees might be charged in addition to the
21 premium. By not mentioning the broker fees in the advertisements, Respondents willfully
22 misrepresented the actual price insurance consumers could expect to pay for insurance from
23 Respondents, and thus deceived and misled consumers. The advertisements were also deceptive
24 and misleading because the undisclosed broker fees in some cases made the price of insurance
25 from Respondents greater than the price from one or more of the competing insurers cited in the
26 advertisements. Respondents comparative rate advertisements violated sections 790.03(a) and
27 (b).

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7.

Beginning sometime after April 11, 2003, and continuing through 2006, Respondents disclosed that broker fees might be charged in addition to premium. However, in their television advertisements, the disclosures have been of such short duration, with such small type, that very few consumers have been able or would be able to notice and understand the disclosures. Not only have the disclosures been designed and presented in a manner that would render them ineffective, their deficiency has been so blatant that Respondents could not have reasonably or in good faith believed them to be adequate. Consequently, Respondents have in effect continued, after April 11, 2003, and continuing through 2006, willfully to fail to disclose in their televised comparative rate advertisements that broker fees might be charged in addition to premium. By not mentioning the broker fees in the advertisements, Respondents have willfully misrepresented the actual price insurance consumers could expect to pay for insurance from Respondents, and thus deceived and misled consumers. The advertisements have also been deceptive and misleading because the undisclosed broker fees in some cases made the price of insurance from Respondents greater than the price from one or more of the competing insurers cited in the advertisements. Respondents televised comparative rate advertisements during the time in question therefore violate sections 790.03(a) and (b).

8.

The facts alleged in paragraphs 6 and 7 establish that Respondents willfully engaged in unfair or deceptive acts or practices defined in sections 790.03, and constitute grounds to impose a civil penalty of \$10,000 for each act. For the purpose of calculating the total amount of the civil penalty under section 790.035, a separate act shall exist for each and every instance, occurrence, or appearance in which any Respondent's advertisement of the type described in paragraphs 6 and 7 appeared in any newspaper, appeared in any correspondence mailed to any prospective insured in this state, or appeared in any television commercial.

Respondents are ordered to appear at a hearing, on a date to be determined and separately noticed, and show cause, if any exists, why it is not liable as alleged in this pleading.

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ACCUSATION

9.

The facts alleged in paragraphs 1 – 8 are realleged. Those facts establish that Respondents conducted their business fraudulently, and provide grounds for the Commissioner to suspend their certificates of authority for one year, pursuant to section 704(a).

Dated: April 11, 2011

CALIFORNIA DEPARTMENT OF INSURANCE

By 

Donald P. Hilla
Senior Staff Counsel

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PROOF OF SERVICE

**IN THE MATTER OF
MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY AND
CALIFORNIA AUTOMOBILE INSURANCE COMPANY
OAH Case No.: N2006040185; Case No. NC-03027545**

I am over the age of eighteen years and am not a party to the within action. I am an employee of the Department of Insurance, State of California, employed at 45 Fremont Street, 21st Floor, San Francisco, California 94105. On April 11, 2011, I served the following document(s):

LETTER TO HON. STEVEN C. OWYANG;

**SECOND AMENDED: NOTICE OF NONCOMPLIANCE; ORDER TO
SHOW CAUSE; ACCUSATION**

on all persons named on the attached Service List, by the method of service indicated, as follows:

If **U.S. MAIL** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items to be sent by mail, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for mailing by U.S. Mail. Under that practice, outgoing items are deposited, in the ordinary course of business, with the U.S. Postal Service on that same day, with postage fully prepaid, in the city and county of San Francisco, California.

If **OVERNIGHT SERVICE** is indicated, by placing on this date, true copies in sealed envelopes, addressed to each person indicated, in this office's facility for collection of outgoing items for overnight delivery, pursuant to Code of Civil Procedure Section 1013. I am familiar with this office's practice of collecting and processing documents placed for overnight delivery. Under that practice, outgoing items are deposited, in the ordinary course of business, with an authorized courier or a facility regularly maintained by one of the following overnight services in the city and county of San Francisco, California: Express Mail, UPS, Federal Express, or Golden State overnight service, with an active account number shown for payment.

If **FAX SERVICE** is indicated, by facsimile transmission this date to fax number stated for the person(s) so marked.

If **PERSONAL SERVICE** is indicated, by hand delivery this date.

If **INTRA-AGENCY MAIL** is indicated, by placing this date in a place designated for collection for delivery by Department of Insurance intra-agency mail.

If **EMAIL SERVICE** is indicated, by electronic mail transmission this date and .pdf attachment through the office email service for State of California Department of Insurance.

Executed this date at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Jean Hipon

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SERVICE LIST
IN THE MATTER OF
MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY AND
CALIFORNIA AUTOMOBILE INSURANCE COMPANY
OAH Case No.: N2006040185; Case No. NC-03027545

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<u>Name/Address</u>	<u>Phone/Fax Numbers</u>	<u>Method of Service</u>
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Steven C. Owyang Administrative Law Judge Office of Administrative Hearings 1515 Clay Street, Suite 206 Oakland, CA 94612 steven.owyang@dgs.ca.gov		EMAIL
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Steven H. Weinstein	Tel.: (213) 680-2800	EMAIL
Spencer Y. Kook	Fax: (213) 614-7399	

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BARGER & WOLEN LLP
633 West Fifth Street, 47th Floor
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sweinstein@bargerwolen.com
skook@bargerwolen.com

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Pamela Pressley CONSUMER WATCHDOG 1750 Ocean Park Boulevard, Suite 200 Santa Monica, CA 90405 pam@consumerwatchdog.org	Tel.: (310) 392-0522 Fax: (310) 392-8874	EMAIL
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Arthur D. Levy LEVY RAM & OLSON LLP 639 Front Street, Fourth Floor San Francisco, CA 94111 arthur@yesquire.com	Tel.: (415) 433-4949 Fax: (415) 433-7311	EMAIL
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For Reference Only
April 11, 2011 changes illustrated by underline
for additions and strikethrough for deletions

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