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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 Insurance Group:
Mercury Casualty Company (MCC),
Mercury Insurance Company (MIC), and
California Automobile Company (CAIC),

Respondents.

DOI File No.: NC-2020-00001

**CONSUMER WATCHDOG'S PETITION TO
INTERVENE AND PARTICIPATE AND NOTICE
OF INTENT TO SEEK COMPENSATION**

[Ins. Code 1861.10; Cal. Code Regs, tit. 10, 2661.2 and
2661.4]

1 On September 9, 2021, the California Department of Insurance (“CDI”) initiated this
2 noncompliance action by issuing a Notice of Noncompliance (“NNC”) to Respondents Mercury Insurance
3 Group (“Mercury”), informing Mercury that it had good cause to believe that Mercury’s rating plans,
4 rating systems, rates, and underwriting guidelines, and the implementation of the same, violate various
5 provisions of California law, including Proposition 103.

6 Pursuant to Insurance Code section 1861.10 (a) and California Code of Regulations, title 10
7 (“10 CCR”), section 2661.4, subdivision (a), Consumer Watchdog hereby submits this Petition to
8 Intervene and Participate and Notice of Intent to Seek Compensation (“Petition”) seeking leave to
9 intervene and participate in the above-referenced proceeding before the CDI to enforce Proposition 103.
10 Consumer Watchdog intends to seek compensation in this proceeding, and, pursuant to 10 CCR
11 § 2661.3(c), Consumer Watchdog’s proposed budget is attached hereto as Exhibit A.

12 **I. PETITIONER**

13 1. Petitioner Consumer Watchdog is a nonprofit, nonpartisan, public interest corporation
14 organized to represent the interests of consumers and taxpayers. A core focus of Consumer Watchdog’s
15 advocacy is the representation of the interests of insurance consumers and policyholders, particularly as
16 they relate to the implementation and enforcement of Proposition 103, in matters before the Legislature,
17 the courts, and the CDI.

18 2. Consumer Watchdog’s staff and consultants include some of the nation’s foremost
19 consumer advocates and experts on insurance ratemaking matters.

20 3. Consumer Watchdog has served as a public watchdog with regard to insurance rates and
21 insurer rollback liabilities under Proposition 103 by monitoring rollback settlements and the status of the
22 rollback regulations; reviewing and challenging over 140 rate filings made by insurers seeking excessive
23 rates; participating in rulemaking and adjudicatory hearings before the CDI; and educating the public
24 concerning industry underwriting and rating practices, their rights under Proposition 103, and other
25 provisions of state law.¹

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¹ Consumer Watchdog’s firm resume is attached hereto as Exhibit B.

1 4. Consumer Watchdog has also intervened in multiple noncompliance actions brought by the
2 CDI.² Notable here, in 2007, Consumer Watchdog intervened in a noncompliance action against Mercury
3 at the request of CDI staff. (*In the Matter of: Mercury Insurance Company, Mercury Casualty Company,*
4 *and California Automobile Insurance Company*, Case No. NC-03027545, OAH No. N2006040185.) That
5 matter, which spanned 15 years from the Department’s initial notice of noncompliance, concerned
6 Mercury’s violations of Proposition 103’s prior approval requirements and prohibition against unfair rate
7 discrimination (sections 1861.01 and 1861.05). Mercury’s agents charged unapproved fees in addition to
8 the approved premium amounts on over 180,000 insurance transactions over a four-year period from
9 1999–2004. In addition to contesting its liability for that misconduct, Mercury brought two writ
10 proceedings, one in Los Angeles County Superior Court challenging the agency’s authority, and the other
11 in Orange County Superior Court contesting the \$27.6 million civil penalty the Commissioner ultimately
12 levied against the company for the violations—the largest single penalty against a property-casualty
13 insurance company in California history. The second writ action resulted in a Court of Appeal decision
14 upholding the civil penalty against Mercury, which ultimately paid more than \$41 million,³ including
15 interest, and rejecting arguments by Mercury that would have undermined enforcement of Proposition
16 103. (*Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82.) Consumer Watchdog played a leading role in
17 the administrative trial and in the subsequent appellate litigation.

18 5. Consumer Watchdog has also initiated and intervened in numerous actions in state court
19 and appeared as amicus curiae in matters involving the interpretation and application of Proposition 103
20 and the Insurance Code.⁴

21 _____
22 ² See, e.g., *In the Matter of the Rating Practices of Farmers Insurance Exchange and Mid Century*
23 *Insurance Company*, File No. NC-2017-00003 (alleging application of techniques to raise premiums based
24 on a motorist’s sensitivity to price); *In the Matter of the Rating Practices of Allstate Insurance Company*
25 *and Allstate Indemnity Company*, File No. NC-2018-00001 (same).

26 ³ Mercury Insurance Inks \$41M Deal To End Illegal Fee Claims, Consumer Watchdog, October 2, 2019,
27 <https://consumerwatchdog.org/in-the-news/mercury-insurance-inks-41m-deal-end-illegal-fee-claims/>.

28 ⁴ For example, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi*
(1994) 8 Cal.4th 216; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243; *Proposition 103*
Enforcement Project v. Quackenbush (1998) 64 Cal.App.4th 1473; *Spanish Speaking Citizens’*
Foundation v. Low (2000) 85 Cal.App.4th 1179; *Donabedian v. Mercury Insurance Co.* (2004) 116
Cal.App.4th 968; *State Farm Mutual Automobile Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029; *The*
Foundation for Taxpayer and Consumer Rights v. Garamendi (2005) 132 Cal.App.4th 1354; *Association*

1 **II. INTEREST OF PETITIONER IN THIS PROCEEDING**

2 6. Consumer Watchdog’s principal interest in this proceeding is to represent the interests of
3 consumer applicants and policyholders to ensure that Mercury’s insurance rates, premiums, and practices
4 as alleged in the NNC comply with California law generally and Proposition 103’s requirements in
5 particular as outlined further below. Pursuant to state law, California drivers are required to purchase
6 automobile insurance, and most homeowners are required to purchase homeowners insurance by their
7 mortgage lenders. Consumers who are overcharged or unfairly discriminated against by insurers for these
8 and other insurance coverages are part of Consumer Watchdog’s core constituency. As “the goal of
9 fostering consumer participation in the administrative rate-setting process” is “one of the purposes of
10 Proposition 103,” consumer advocacy groups are permitted to intervene in cases such as this, where the
11 enforcement of Proposition 103 is directly at issue and the CDI would benefit significantly from the
12 intervention of an established consumer advocacy group such as Consumer Watchdog. (*Ass’n of*
13 *California Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029, 1052.)

14 7. Proposition 103 prohibits insurance companies from charging rates that are “excessive,
15 inadequate, unfairly discriminatory, or otherwise in violation of this Chapter [Chapter 9 of Part 2 of
16 Division 1 of the Insurance Code, i.e., Insurance Code sections 1850.4 through 1870].” (Ins. Code
17 § 1861.05 (a)). “Insurance rates subject to this Chapter must be approved by the commissioner prior to
18 their use” (Ins. Code § 1861.01(c)), and no rate “shall be approved or remain in effect” that is in violation
19 of these requirements (Ins. Code § 1861.05(a)). Insurance companies are required to submit a “complete
20 rate application” to the Commissioner to obtain approval. (Ins. Code § 1861.05(b).)

21 8. Additional rules and procedures govern the premiums that insurance companies may
22 charge for automobile insurance. Insurance Code section 1861.02(a) provides that “[r]ates and premiums
23 for an automobile insurance policy . . . shall be determined by application of the following [rating] factors
24 in decreasing order of importance: (1) The insured’s driving safety record. (2) The number of miles he or
25 she drives annually. (3) The number of years of driving experience the insured has had. (4) Such other

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of California Insurance Companies v. Poizner (2009) 180 Cal.App.4th 1029; *Mercury Casualty Co. v. Jones* (2017) 8 Cal.App.5th 561; *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82; and *State Farm General Ins. Co. v. Lara* (2021) 71 Cal.App.5th 197.

1 [optional rating] factors as the commissioner may adopt by regulation that have a substantial relationship
2 to the risk of loss.” (Ins. Code § 1861.02(a).) The authorized optional rating factors that have been adopted
3 by the Commissioner are set forth in 10 CCR § 2632.5(d). “Notwithstanding any other provision of law,
4 the use of any criterion without such approval shall constitute unfair discrimination.” (Ins. Code
5 § 1861.02(a).) Notably here, Insurance Code section 1861.02(b) requires that insurers offer and sell
6 policies to all drivers who meet the statutory Good Driver requirements at a rate at least 20% below the
7 rate the insured would have otherwise been charged for the same coverage and subdivision, while (c)
8 prohibits the use of the absence of prior automobile insurance coverage as “a criterion for determining
9 eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or
10 insurability.” 10 CCR § 2632.4(a) repeats the statutory admonition that “[n]o insurer shall use a rating
11 factor which is not set forth in these regulations” Further, 10 CCR § 2632.10 states that “no insurer
12 may [] use a class plan, or charge or collect a premium which does not comply with the provisions of this
13 subchapter or with the provisions of the California Insurance Code. No insurer may offer, sell or renew a
14 policy of automobile insurance, or collect a premium for a policy of automobile insurance which is not
15 calculated in accordance with a class plan that complies with this subchapter.” 10 CCR § 2632.14(b)
16 requires insurers to “offer and sell good driver discount policies under the same terms and conditions and
17 with the same options and services that the insurer offers and sells to the public for any other automobile
18 insurance policy,” including, but not limited to, the terms for payment of premiums.

19 9. As detailed extensively in the NNC and outlined further below, the CDI has alleged that
20 Mercury is currently, or has at relevant times been, in violation of a number of the above-referenced
21 statutes and regulations aimed at enforcing the above basic tenets of Proposition 103, both in its
22 Homeowners and Auto lines of insurance. The results of this proceeding will have important repercussions
23 for the California insurance marketplace as a whole. In addition to the importance of protecting Mercury’s
24 current and potential policyholders from violations of Proposition 103, Consumer Watchdog seeks to
25 intervene in this proceeding in order to defend and protect the right of all California consumers to avoid
26 unjust premiums and unfair discrimination. By intervening in this proceeding, Consumer Watchdog also
27 seeks to defend the authority of the Insurance Commissioner to prohibit unlawful practices and to
28 undertake enforcement actions in this and similar proceedings.

1 Consumer Watchdog’s interest in this matter—and concern for California consumers—is heightened by
2 the many allegations in the current NNC of wrongful and unlawful practices by Mercury that are identical
3 or similar to wrongful and unlawful practices that were uncovered by previous examinations conducted
4 by CDI, some of which were the subject of previous enforcement actions by CDI. For example, in April
5 2010, Insurance Commissioner Poizner released to the public records of agency examinations, internal
6 agency analyses, and charging documents citing 35 categories of alleged violations, including that
7 Mercury “failed to correct violations of state law identified by the Department of Insurance” dating back
8 to 1998 and 2002. Those records show that Mercury repeatedly tried to evade liability for its unlawful
9 practices, opposing the Department’s interpretations of the law, and in some cases going so far as to
10 sponsor legislation that it believed would legalize its actions. In other cases, Mercury ultimately agreed to
11 cease the practices. Nevertheless, the current NNC shows that Mercury has continued to engage in many
12 of the same pernicious practices, including using loss history to decline and non-renew homeowners and
13 renters risks, without having specific and objective guidelines regarding how loss history is used in
14 underwriting (Allegation No. 3);⁵ failing to include off-the-record underwriting requirements, such as
15 interior home inspections, in its eligibility guidelines (Allegation 4);⁶ failing to document the information
16 necessary to demonstrate that it properly applied the “Gated Community Credit” (Allegation No. 7);⁷
17 failing to offer Good Drivers the lower-priced affiliate when they become Good Drivers before renewal
18 (Allegation No. 8A);⁸ the illegal use of persistency when writing and renewing policies (Allegation Nos.
19 9, 9A, and 9B);⁹ and denying and non-renewing Good Drivers whose driver’s licenses were suspended
20 for failure to pay child support (Allegation No. 10).¹⁰ Mercury’s disregard for California law deeply harms
21 Californians and the integrity of California’s marketplace in ways that cannot be fully redressed by
22 monetary penalties. Indeed, Mercury is apparently undeterred by monetary penalties. Such blatant
23 recidivism suggests that Mercury should be subjected to the strongest possible sanction: suspension or
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25 ⁵ 2007 FRUB Exam, attached hereto as Exhibit C, p. 35.

26 ⁶ 2007 FRUB Exam, pp. 34–5.

27 ⁷ 2002 FRUB Exam, attached hereto as Exhibit D p. 31.

28 ⁸ 2007 FRUB Exam, p. 28.

⁹ 2004 CDI Referral Cover Memo, attached hereto as Exhibit E, p. 2.

¹⁰ 2007 FRUB Exam, p. 31.

1 revocation of its certificate of authority to operate in California. (See Insurance Code § 700 et seq.) If the
2 evidence adduced in this proceeding so indicates, Consumer Watchdog will seek that relief. As it has
3 previously, Mercury can be expected to deploy enormous legal resources to evade or derail accountability
4 in this matter so that it can continue its decades-long pattern of resistance to the consumer protections
5 enacted by Proposition 103. As noted in paragraphs 1–5 above, Consumer Watchdog’s staff and
6 consultants have an unparalleled 35 years of experience and expertise in insurance rate matters,
7 particularly in the enforcement of Proposition 103. Consumer Watchdog believes this unique experience
8 will protect current and potential policyholders against such misconduct and assist the Commissioner both
9 in enforcing the provisions of Proposition 103 that Mercury is accused of violating and in making the
10 required determinations and resolving the issues raised by the Noncompliance Action and by Mercury’s
11 purported defenses to it.

12 **III. ISSUES TO BE RAISED AND POSITIONS OF PETITIONER IN THIS PROCEEDING**

13 10. In the NNC, CDI asserts 29 allegations regarding alleged practices that violate provisions
14 of Proposition 103 and regulations promulgated thereunder on which Consumer Watchdog seeks to
15 intervene.¹¹ Specifically, the NNC Prop 103 Allegations allege violation of the following provisions of
16 the California Insurance Code (CIC) and California Code of Regulations (CCR):

- 17 • **CIC § 1857** (failure to maintain records of the information collected or used by it in
18 connection with the rates and/or underwriting rules): Allegation Nos. 4, 5, 6, 7, 13, 21B, 22
- 19 • **CIC § 1861.01(c)** (failure to use approved rates/using unapproved rates): Allegation Nos. 6,
20 21, 23, 25
- 21 • **CIC § 1861.02(a)(4)** (use of a criteria without approval): Allegation Nos. 9, 9A, 9B
- 22 • **CIC § 1861.02(b)** (failure to offer and sell a Good Driver discount policy to any person who
23 meets the standards of 1861.025): Allegation Nos. 8A2, 8C, 8C1, 8D, 8D2, 9A, 9B, 10
- 24 • **CIC § 1861.02(c)** (using persistency “as a criterion for determining eligibility for a Good
25 Driver Discount Policy, or generally for automobile rates, premiums or insurability”):
26 Allegation Nos. 9, 9A, 9B

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28 ¹¹ See NNC, Allegation Nos. 3, 4, 5, 6, 7, 8A, 8A2, 8C, 8C1, 8D, 8D2, 9, 9A, 9B, 10, 12, 13, 14, 16A, 16B, 17, 18, 21, 21B, 22, 23, 24, 25, 26 (“Prop 103 Allegations”).

- 1 • **CIC § 1861.03(a)** (unfair business practices): Allegation No. 14
- 2 • **CIC § 1861.03(c)** (cancelling or non-renewing for reasons other than nonpayment of
- 3 premium, fraud, or substantial increase in hazard): Allegation No. 14
- 4 • **CIC § 1861.025** (failure to sell a Good Driver Discount policy from the insurer of the
- 5 consumer's choice): Allegation Nos. 8D, 8D2
- 6 • **CIC § 1861.05(a)** (use of unfairly discriminatory rates): Allegation Nos. 3, 4, 5, 6, 7, 8A,
- 7 8A2, 8C, 8C1, 8D, 8D2, 9, 9A, 9B, 10, 12, 13, 16A, 16B, 17, 18, 21, 21B, 22, 23, 24, 25, 26
- 8 • **CIC § 1861.05(b)** (failure to file complete rate application): Allegation Nos. 21, 23, 25
- 9 • **CIC § 1861.16(b)** (failure to offer and sell a Good Driver the policy with the lowest rates in
- 10 the insurer group): Allegation Nos. 8A, 8A2, 8C, 8C1, 8D, 8D2, 9A, 9B
- 11 • **CCR § 2360.0(b)** (failure to maintain eligibility guidelines sufficiently detailed to determine
- 12 the appropriate rating plan for the insured and placing the insured in the appropriate plan):
- 13 Allegation Nos. 3, 5, 14, 17
- 14 • **CCR § 2360.2** (failure to maintain eligibility guidelines sufficiently detailed to determine the
- 15 appropriate rating plan for the insured and placing the insured in the appropriate plan):
- 16 Allegation Nos. 3, 4, 5, 8A, 10, 14, 16A, 21, 22, 26
- 17 • **CCR § 2360.3** (failure to charge each insured the lowest Premium for which the insured
- 18 qualifies at time of application and at renewal): Allegation Nos. 5, 6, 8A, 8A2, 8C, 8D, 8D2,
- 19 9A, 9B, 10, 12, 16A, 16B, 17
- 20 • **CCR § 2360.4** (failure to charge each insured the lowest Premium for which the insured
- 21 qualifies at time of application and at renewal): Allegation Nos. 5, 6, 8A, 8A2, 8C, 8D, 8D2,
- 22 9A, 10, 12, 16A, 16B, 17
- 23 • **CCR § 2360.5** (failure to place the insured with the company in the group which would
- 24 charge the insured the lowest premium): Allegation Nos. 8A, 8A2, 8C, 8D, 8D2, 10
- 25 • **CCR § 2360.6** (failure to keep documentation in the underwriting file identifying all
- 26 information which the insurer considered in determining the Premium charged to the
- 27 insured): Allegation Nos. 4, 5, 6, 7, 13, 21, 21B, 22
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- 1 • **CCR § 2632.5(a)** (failure to establish a class plan that complies with the Good Driver
2 Discount): Allegation No. 10
- 3 • **CCR § 2632.14** (failure to offer good driver discount policy under the same terms,
4 conditions, options and services the insurer offers for any other automobile insurance policy):
5 Allegation Nos. 9, 9A, 9B
- 6 • **CCR § 2632.14.3** (attempting to dissuade a Good Driver from completing an application for
7 insurance): Allegation Nos. 8D, 8D2
- 8 • **CIC § 2632.14(b)** (failure to offer Good Driver Discount policies “under the same terms and
9 conditions and with the same options and services that the insurer offers and sells to the
10 public for any other automobile insurance policy”): Allegation No. 8A2

11 Consumer Watchdog intends to introduce evidence and utilize the discovery process to adduce additional
12 evidence on each of the Prop 103 Allegations to show that Mercury acted willfully in engaging in the
13 above unlawful practices and to support the CDI in obtaining the requested civil penalties and such other
14 remedies as may be imposed by the Commissioner in this regard.

15 11. If these allegations against Mercury are proven true, Mercury has violated California law
16 as set forth in the Notice. Specifically, the allegations, if true, demonstrate that Mercury has violated
17 provisions of the Insurance Code, including but not limited to sections 1861.01, 1861.02, 1861.025,
18 1861.03, 1861.05, and 1861.16, enacted by Proposition 103, which prohibit excessive and unfairly
19 discriminatory rates, premiums, and practices, and which require insurers to obtain prior approval by the
20 Commissioner of the rates charged to their policyholders.

21 12. Consumer Watchdog also intends to oppose the positions adopted by Mercury in its Motion
22 to Dismiss, filed on September 30, 2022, which would limit the Commissioner’s authority to address and
23 redress violations of Proposition 103 and other provisions of the Insurance Code. Consumer Watchdog
24 intends to defend the noncompliance laws so that they provide the strongest possible protection of
25 California consumers and the insurance marketplace. It is also Consumer Watchdog’s position that were
26 Mercury to succeed in this attempt to escape accountability for its illegal conduct, personal line insurance
27 policyholders would be placed at risk, and the express statutory protections enacted by the voters through
28 Proposition 103 would be effectively negated.

1 13. Consumer Watchdog reserves the right to raise and address other relevant matters and
2 issues in this matter as it proceeds.

3 **III. AUTHORITY FOR PETITION TO INTERVENE**

4 14. The authority for Consumer Watchdog’s petition to intervene is Insurance Code section
5 1861.10, subdivision (a), which grants “any person” the right to “initiate or intervene in any proceeding
6 permitted or established pursuant to this chapter [Chapter 9 of Part 2 of Division 1 of the Insurance Code]
7 . . . and enforce any provision of this article.” This noncompliance action, commenced upon CDI’s service
8 of the NNC (10 CCR § 2614.2), is a proceeding to enforce, inter alia, Insurance Code sections 1857,
9 1861.01, 1861.02, 1861.03, 1861.025, 1861.05, and 1861.16, as well as the regulations promulgated
10 thereunder, including Title 10 of the California Code of Regulations sections 2360.0, 2360.2, 2360.3,
11 2360.4, 2360.5, 2360.6, 2632.5, 2632.14, and 2632.14.3. Consequently, it is also a proceeding both
12 “permitted” and “established” by Chapter 9. This petition to participate is also authorized by 10 CCR
13 § 2661.4.

14 **IV. PARTICIPATION OF CONSUMER WATCHDOG**

15 15. Consumer Watchdog verifies, in accordance with 10 CCR § 2661.3(b), that it will be able
16 to attend and participate in this proceeding without unreasonably delaying this proceeding or any other
17 proceedings before the Insurance Commissioner. As it has in previous matters, Consumer Watchdog will
18 participate fully in all aspects of this proceeding, including submission of testimony from an actuary and
19 witnesses.

20 **V. INTENT TO SEEK COMPENSATION**

21 16. The Commissioner has awarded Consumer Watchdog compensation for its reasonable
22 advocacy and witness fees and expenses in past departmental proceedings. The Commissioner issued
23 Consumer Watchdog’s latest Finding of Eligibility on July 26, 2022, effective for two years as of July 12,
24 2022. Consumer Watchdog was previously found eligible to seek compensation on August 25, 2020,
25 effective as of July 12, 2020; July 12, 2018; July 14, 2016; July 24, 2014; July 24, 2012; July 2, 2010;
26 August 25, 2008; July 14, 2006; July 2, 2004; June 20, 2002; October 1, 1997; September 26, 1995;
27 September 27, 1994; and September 13, 1993.


1 17. Consumer Watchdog presently intends to seek compensation in this proceeding. Pursuant
2 to 10 CCR § 2661.3(c), Consumer Watchdog’s estimated budget in this proceeding is attached hereto as
3 Exhibit A. Consumer Watchdog has based its estimated budget on several factors, including (1) the
4 technical and legal expertise needed to address these issues; (2) its current best estimate of the time needed
5 to participate effectively in these proceedings; and (3) past experience in similar proceedings before the
6 CDI.

7 18. The estimated budget is reasonable, and the staffing level is appropriate, given the expertise
8 that Consumer Watchdog and its consultants bring to these proceedings and in light of the fact that the
9 issues involved are matters central to Consumer Watchdog’s organizational mission and concern key
10 provisions of Proposition 103. The budget presented in the attached Exhibit A is a preliminary estimate,
11 and Consumer Watchdog reserves the right to amend its proposed budget as its expenses become more
12 certain, or in its request for final compensation. Consumer Watchdog will give notice of such
13 modifications as soon as practicable after it discovers the need to revise its estimates and shall comply
14 with the budget revision requirements in the relevant intervenor regulations.

15 WHEREFORE, Consumer Watchdog respectfully requests that the Insurance Commissioner
16 GRANT its petition to participate in this proceeding.

17
18 DATED: October 11, 2023

Respectfully submitted,
Harvey Rosenfield
Pamela Pressley
Benjamin Powell
CONSUMER WATCHDOG

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22 By: 
23 Benjamin Powell
24 Attorneys for CONSUMER WATCHDOG
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1 **VERIFICATION OF BENJAMIN POWELL IN SUPPORT OF CONSUMER WATCHDOG'S**
2 **PETITION TO PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION**

3 I, Benjamin Powell, verify:

4 1. I am counsel for Consumer Watchdog. If called as a witness, I could and would testify
5 competently to the facts stated in this verification.

6 2. I personally prepared the pleading titled, "Consumer Watchdog's Petition to Participate
7 and Notice of Intent to Seek Compensation" filed in this matter. All of the factual matters alleged therein
8 are true of my own personal knowledge, or I believe them to be true after I conducted some inquiry and
9 investigation.

10 3. Pursuant to California Code of Regulations, title 10, section 2661.3, Consumer Watchdog
11 attaches as Exhibit A its estimated budget in this proceeding.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct.

14 Executed on October 11, 2023 at Los Angeles, California.


15 
16 _____
17 Benjamin Powell

EXHIBIT A

**EXHIBIT A
PRELIMINARY BUDGET**

<u>ITEMS</u>	<u>ESTIMATED COST</u>
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Counsel and Support Staff for Consumer Watchdog

Pamela Pressley (Senior Staff Attorney) @ \$595 per hour, 100 hours	\$59,500
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- Advise Consumer Watchdog counsel in all phases of proceeding, evidentiary hearing, and preparation of post-hearing briefing; confer with Consumer Watchdog counsel, and outside experts regarding legal and evidentiary issues; participate in discussions with counsel for all parties; review and edit briefing.

Harvey Rosenfield (Of Counsel) @ \$695 per hour, 600 hours	\$417,000
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- Supervise Consumer Watchdog counsel; develop and oversee strategy; oversee preparation of legal documents; confer with Consumer Watchdog counsel and outside experts regarding legal and evidentiary issues; participate in discussions with counsel for all parties; participate in all phases of proceeding, including discovery, evidentiary hearing, and preparation of pre- and post-hearing briefing.

Benjamin Powell (Staff Attorney) @ \$350 per hour, 500 hours.....	\$175,000
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- Prepare petition to participate/intervene; confer with attorneys and actuary on overall strategy and technical and legal issues; act as lead litigation attorney in all aspects of pre-hearing discussions with the Parties, discovery, motions, preparation and participation in evidentiary hearing, including any examination of witnesses, and drafting post-hearing briefing and request for compensation.

Daniel Sternberg (Staff Attorney) @ \$350 per hour, 200 hours.....	\$70,000
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- Review submissions by Respondents and confer with attorneys and actuary on technical and legal issues; prepare for and assist with evidentiary hearing, cross-examination; assist with legal research and briefing and preparation of request for compensation.

Ben Armstrong (Staff Actuary) @ \$425 per hour, 300 hours.....	\$127,500
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- Staff actuary to review all discovery documents; prepare actuarial analysis; participate in meet-and-confers with the parties as needed; prepare written testimony; testify and assist attorneys in preparation for cross-examination of insurer's expert witnesses.

Kaitlyn Gentile (Paralegal) @ \$200 per hour, 200 hours.....	\$40,000
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- Assist with preparation of legal documents, legal research, and document review; participate in strategy discussions with Consumer Watchdog counsel; assist with preparation for hearing.

<u>Consumer Watchdog Expenses</u> (Photocopies, facsimile, telephone calls, postage, etc.).....	\$2,000
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Consumer Watchdog Travel

Ground transportation; airfare; hotel	\$8,000
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TOTAL ESTIMATED BUDGET:	<u>\$899,000</u>
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EXHIBIT B



Consumer Watchdog Legal Project

Consumer Watchdog is a nonprofit, non-partisan consumer research and advocacy organization founded in 1985 by consumer attorney and advocate Harvey Rosenfield. Its mission is to provide an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government, and politics. The organization deploys public interest attorneys, policy experts, strategists, and grassroots activists to expose, confront, and change unjust practices in the private and public sectors.

Consumer Watchdog's Legal Project attorneys advocate for consumers' rights and hold corporations and government officials accountable in federal and state courts and before regulatory agencies.

The Legal Project specializes in highly complex litigation, including class actions in federal and state courts, to address abuses in the marketplace such as illegal overcharges, false advertising, and violation of consumer protection laws. Some of our most notable accomplishments include:

- A 2021 victory in the Supreme Court of the United States, representing plaintiffs living with HIV in a suit against CVS for unlawfully disclosing HIV status and/or putting individuals at risk of such a disclosure, as well as providing them into a lower tier of service. After Consumer Watchdog's unanimous win in the 9th Circuit Court of Appeals, CVS petitioned the high court for review. Review was granted and the case was briefed, but CVS unexpectedly dropped the case, leaving the earlier victory intact. *Doe v. CVS Pharmacy, Inc.* (9th Cir. 2020) 982 F.3d 1204, *cert. granted in part*, (2021) 141 S. Ct. 2882, and *cert. dismissed sub nom. CVS Pharmacy, Inc. v. Doe, One* (2021) 142 S. Ct. 480.
- Settled a privacy case against Zoom alleging the video conferencing platform misrepresented the level of security it offered users (*Consumer Watchdog v. Zoom Video Comms., Inc.* (D.D.C. July 30, 2021), No. 20-cv-02526.)
- Settled a class action suit against Anthem Blue Cross for violating state and federal law by canceling consumers' health insurance plans and automatically enrolling them in plans that eliminate coverage for out-of-network doctors without proper notice. (*Simon v. Blue Cross of Cal.* (L.A. Cty. Super. Ct. Nov. 2, 2020), No. BC639205.)
- Settled two cases against Transamerica Life Insurance Company on behalf of policyholders whose premiums had unexpectedly and illegally skyrocketed, requiring the company to repay more than \$150 million in overcharges in 2019 and up to \$88 million in account value credits in 2020. (*Feller v. Transamerica Life Ins. Co.* (C.D. Cal. Feb. 6, 2019), No. 16-01378 and *Thompson v. Transamerica Life Ins. Co.* (C.D. Cal. Sept. 16, 2020), No. 18-05422.)
- Settled a case against CVS Healthcare Corporation on behalf of a class of 6,000 patients in Ohio whose HIV status was disclosed when a CVS-contracted company, Fiserv, mailed letters to them with information about a federal program to assist them with HIV-related treatment costs. The letters were mailed in envelopes with clear windows that showed patients' names, the words "Ohio

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Department of Health” and the letters HIV, exposing patients’ private medical information to anyone who saw the envelope, in opposition to the standard practice of the Ohio Department of Health of using opaque, non-windowed envelopes when sending out mailings regarding HIV. (*Doe One v. CVS Healthcare Corp.* (S.D. Ohio, Sept. 27, 2019) No. 2:18-CV-238, 2019 WL 4915471, as amended (S.D. Ohio, Oct. 4, 2019) No. 2:18-CV-238, 2019 WL 4893834.)

- Settled three class action lawsuits against health insurers over the “narrow network” issue, in which plaintiffs alleged that their insurers had misrepresented which doctors were “in network” under their plans. Under the settlement agreements, Anthem Blue Cross provided \$15 million in direct payments to consumers, Blue Shield provided more than \$18 million, and Cigna provided more than \$1.8 million. The settlement also ensured that all three providers implement an uncapped claim process. (*Anthem Blue Cross Affordable Care Act Cases* (L.A. Cty. Super. Ct. Aug. 19, 2016), JCCP No. 4805; *Blue Shield of Cal. Affordable Care Act Cases* (S.F. Cty. Super. Ct. Mar. 27, 2018), JCCP No. 4800; and *Davidson v. Cigna* (L.A. Cty. Super. Ct. June 28, 2018), No. BC558566.)
- Settled six class action lawsuits against health insurers for illegally requiring HIV/AIDS patients to purchase their medications from a mail-order pharmacy, threatening their health and privacy. As a result of the settlements, members prescribed HIV/AIDS medications may purchase their medications at any network pharmacy. Members were also allowed to seek reimbursement for out-of-pocket losses resulting from the mail order requirement. (*Doe v. Blue Cross of Cal.* (S.D. Cty. Super. Ct. June 24, 2013), No. 37-2013-00031442; *Doe One v. Unitedhealthcare Ins. Co.* (C.D. Cal. July 31, 2014), No. SACV-13-00864, 2014 WL 3865847; *Doe v. Cigna Health & Life Ins. Co.*, (S.D. Fla. Oct. 6, 2015), No. 15-cv-60894; *Doe v. Anthem, Inc.* (settled informally); *Doe v. Coventry Health Care Inc.* (S.D. Fla. May 5, 2016), No. 15-CIV-62685; and *Doe v. Aetna, Inc.* (S.D. Cal. Mar. 15, 2016), No. 14CV2986-LAB (DHB), 2016 WL 1028363.)
- Settled a class action against Anthem Blue Cross for illegally making mid-year changes to annual deductibles, co-pays, and other out-of-pocket costs. As a result of the settlement, Anthem reimbursed consumers for out-of-pocket losses resulting from the mid-year changes totaling \$8.3 million. The company also agreed not to make mid-year cost increases in the future. (*Taub v. Blue Cross of Cal.* (L.A. Cty. Super. Ct. Aug. 20, 2015) No. BC457809.)
- Settled a class action against Anthem Blue Cross for illegally closing insurance policies and using large rate hikes to force patients into lower-benefit and higher-deductible health coverage—a practice known as the “death spiral.” Relief obtained included a cap on future rate increases and the opportunity for plan members to switch coverage, without medical underwriting, to any open policy regulated by the California Department of Managed Health Care. (*Feller v. Blue Cross of Cal.* (Ventura Cty. Super. Ct. Aug 26, 2011), No. 56-2010-00368587.)
- Settled a class action against the Auto Club requiring the insurer to pay \$22.5 million in refunds to policyholders who were overcharged for not having prior insurance, a practice that is prohibited by insurance reform Proposition 103. (*Proposition 103 Enf’t Project v. Interins. Exch. of the Auto. Club* (L.A. Cty. Super. Ct. 2007), No. BC266218.)

- Secured a consumer's right to enforce the Insurance Code in court under the state's Unfair Competition Law in a case against Mercury for illegally surcharging drivers without prior insurance. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968.)
- Secured a historic \$27.5 million fine against Mercury Insurance Company in an administrative enforcement action for charging excessive and unfairly discriminatory rates by allowing its agents to charge illegal broker fees at the point of sale. (*In the Matter of Mercury Ins. Co.* (Cal. Ins. Comm'r, Feb. 6, 2015), No. NC03027545.)
- Obtained an order from the Insurance Commissioner approving a settlement agreement requiring Farmers Insurance to refund \$1.4 million in premium overcharges and pay a \$2 million fine to the State of California for utilizing improper homeowners insurance underwriting practices. (*In the Matter of the Rates, Rating Plans, or Rating Systems of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.* (Cal. Ins. Comm'r, Aug. 8, 2007).)
- Successfully blocked insurance rate hike requests by dozens of insurance companies, saving Californians over \$4.6 billion since 2003 on their auto, homeowners, earthquake, and medical malpractice insurance.

Consumer Watchdog's attorneys have taken the lead role—authored comprehensive appellate briefs and participated in oral argument—in numerous landmark cases resulting in published appellate and California Supreme Court opinions upholding consumer protection statutes:

- *Villanueva v. Fid. Nat'l Title Co.* (2021) 11 Cal.5th 104 (counsel for amici curiae Consumer Watchdog, Consumer Federation of America, and Consumer Federation of California) – upholding the right of consumers to hold title insurance companies accountable for overcharges and other wrongdoing under the California Insurance Code.
- *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82 (counsel for intervenor Consumer Watchdog) – upholding a \$27.6 million civil penalty against Mercury for violations of Proposition 103's prior approval requirement and prohibition against unfair rate discrimination based on its agents charging unapproved fees in addition to the approved premium amounts on over 180,000 insurance transactions over a four-year period.
- *Mercury Cas. Co. v. Jones* (2017) 8 Cal.App.5th 561 (counsel for intervenor Consumer Watchdog) – successfully defending against insurance trade associations to uphold a decision ordering Mercury to lower its homeowner rates and limiting the amount of institutional advertising that insurers may include in their premium calculations.
- *Consumer Watchdog v. Dep't of Managed Health Care* (2014) 225 Cal.App.4th 862 (counsel for petitioner Consumer Watchdog) – holding that the Department of Managed Health Care can no longer uphold a health plan's denial of coverage for autism treatment provided or supervised by a nationally board-certified individual on the basis that the provider is not licensed.

- *Ass'n of Cal. Ins. Cos. v. Poizner* (2009) 180 Cal.App.4th 1029 (counsel for intervenor Consumer Watchdog) – upholding Department of Insurance regulations consistent with the language and purpose of Proposition 103 to promote consumer participation in rate proceedings.
- *In re Tobacco II* (2009) 207 P.3d 20 (counsel for amicus curiae Consumer Watchdog) – holding that Prop 64 standing requirements apply only to named plaintiffs and not unnamed putative class members.
- *Karnan v. Safeco Ins. Co. of Am.* (2009) 173 Cal.App.4th 814 (counsel for plaintiff) – allowing plaintiff in a UCL action to proceed with pre-certification discovery to locate class members.
- *Fogel v. Farmers Group, Inc.* (2008) 160 Cal.App.4th 1403 (counsel for amicus curiae Consumer Watchdog) – allowing a UCL action to proceed against an insurer challenging as excessive fees paid by policyholders to the insurer's management company.
- *Found. for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354 (counsel for plaintiff) – overturning an illegal legislative amendment to Proposition 103 that would have allowed illegal surcharges to drivers who lacked prior insurance coverage.
- *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029 (counsel for amicus curiae FTOR) – upholding against industry challenge Department of Insurance regulations requiring the public disclosure of insurance redlining data submitted to the Insurance Commissioner as required by Proposition 103.
- *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968 (counsel for amicus curiae Consumer Watchdog) – upholding consumers' right to bring a UCL action to enforce Proposition 103.
- *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473 (counsel for plaintiff) – invalidating an illegal legislative amendment to Proposition 103 that would have decreased the amount of refunds owed to policyholders under the initiative's rate rollback provision.
- *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243 (counsel for intervenor) – Cal. Supreme Court decision invalidating an illegal legislative amendment to Proposition 103 that would have exempted surety insurance from regulation.
- *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216 (counsel for intervenor) – Cal. Supreme Court decision upholding insurance rate regulations enforcing Proposition 103's prohibition against excessive or inadequate rates.
- *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805 (counsel for intervenor) – Cal. Supreme Court decision upholding Proposition 103 against constitutional challenge by the insurance industry.

Consumer Watchdog's Legal Project is currently litigating high impact consumer protection lawsuits and administrative actions, including:

- A class action suit on behalf of an individual living with HIV against a public health agency for unlawful breach of his and other patients' protected medical information. (*Doe v. Cal. Dep't of Pub. Health* (L.A. Cty. Super. Ct. filed Aug. 25, 2020), No. 20STCV32364.)
- A petition for writ of mandate against Insurance Commissioner Ricardo Lara and the California Department of Insurance seeking to compel responses to requests for records made under California's Public Records Act. (*Consumer Watchdog v. Lara* (L.A. Cty. Super. Ct., filed Feb. 18, 2020), No. 20STCP00664.)
- A class action on behalf of enlisted military personnel alleging that their auto insurance company, USAA, discriminates against enlisted servicemembers by charging them higher premiums than officers, in violation of provisions of Proposition 103, California's voter approved insurance reform law and the Unruh Civil Rights Act. (*Coleman v. United Servs. Auto. Ass'n* (C.D. Cal., filed Feb. 4, 2021), No. 21-cv-217.)

Consumer Watchdog Legal Team

Jerry Flanagan

Jerry Flanagan is Consumer Watchdog's Litigation Director. Flanagan leads Consumer Watchdog's litigation efforts in the areas of health insurance coverage and access to treatments, internet privacy, the California Public Records Act, and First Amendment issues. He has 25 years experience working in public interest and health care policy, legislation and litigation.

Flanagan has spearheaded efforts to address discrimination against those with HIV and other serious illnesses in the era of the Affordable Care Act (aka "Obamacare").

Flanagan was counsel of record in a case before the United States Supreme Court in 2022 where he and other Consumer Watchdog counsel represented plaintiffs living with HIV in a suit against CVS for discrimination, including CVS's failure to provide medically appropriate dispensing of HIV medications and access to necessary counseling. After Consumer Watchdog's unanimous win in the Ninth Circuit Court of Appeals, CVS petitioned to the high court for review. Review was granted and the case was briefed, but CVS unexpectedly dropped the case, leaving the earlier victory intact. *Doe v. CVS Pharmacy, Inc.* (9th Cir. 2020) 982 F.3d 1204, *cert. granted in part*, (2021) 141 S. Ct. 2882, and *cert. dismissed sub nom. CVS Pharmacy, Inc. v. Doe, One* (2021) 142 S. Ct. 480.

Flanagan is an adjunct professor at Loyola Law School of Los Angeles, where he previously taught the course "Health Insurance Regulation: Law, Policy & Politics" and is currently teaching "Social Change Lawyering: Lobbying, Litigation, Media & More."

Flanagan exposed the illegal practice of health insurers retroactively canceling coverage and authored a law journal article underscoring the need for reform in health insurance rescission law, *Healthy State of*

Mind: The Role of Intent in Health Plan Rescissions, 43 Loy. L.A. L. Rev. 291 (2009). An “intentional misrepresentation” standard for coverage rescissions, advocated by the article, was adopted in the Affordable Care Act.

Prior to joining Consumer Watchdog, Flanagan drafted and won passage of one of the nation’s strongest HMO accountability measures, which was signed into law in New Jersey in 2001.

Flanagan received a B.A. in Social/Cultural Anthropology and Rhetoric from the University of California, Berkeley and his law degree from Loyola Law School of Los Angeles. At Loyola

Flanagan was a Note and Comment Editor on the Loyola Law Review, and he graduated Magna Cum Laude and is a member of the Order of the Coif, Sayre Macneil Scholars Program, St. Thomas More Law Honor Society, and Alpha Sigma Nu Honor Society.

Flanagan was admitted to the California Bar in 2010.

Harvey Rosenfield

As Consumer Watchdog’s founder, Harvey Rosenfield is one of the nation’s foremost consumer advocates. Trained as a public interest lawyer, Rosenfield authored Proposition 103 and organized the campaign that led to its passage by California voters in 1988 despite over \$80 million spent in opposition (still a record).

He has co-authored groundbreaking initiatives on HMO reform and utility rate deregulation (Proposition 9, 1998). Rosenfield is the author of the book, *Silent Violence, Silent Death: The Hidden Epidemic of Medical Malpractice*.

Rosenfield, who established Consumer Watchdog in 1985, has worked for the Federal Trade Commission, the U.S. Congress, in private practice, as a staff attorney for Ralph Nader’s Public Citizen Congress Watch and as the Program Director for the California Public Interest Research Group (CalPIRG).

Rosenfield graduated magna cum laude from Amherst College and obtained a joint Law and Masters degree in Foreign Service from Georgetown University.

Pamela Pressley

Consumer Watchdog’s Senior Staff Attorney, Pamela Pressley has led Consumer Watchdog’s efforts to enforce Proposition 103’s mandates in court to protect California insurance policyholders against discriminatory practices and premium overcharges. Pam has authored appellate briefs and presented oral argument in numerous cases successfully upholding the insurance initiative and other California consumer protection laws, resulting in several precedential published opinions, including *The Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; *Association of California Insurance Companies v. Poizner* (2009) 180 Cal.App.4th 1029, *Mercury Casualty Company v. Jones* (2017) 8 Cal.App.5th 561, and *Mercury Ins. Co. v. Lara* (2019) 35 Cal.App.5th 82.

Pam has also served as lead counsel in challenges before the Department of Insurance to auto, homeowners, business and med mal insurance rate hike proposals, resulting in savings to California policyholders of over \$3.4 billion.

In May 2010, Pam was named as one of the top women litigators in California by the *Daily Journal*. At the time, she had served “as litigation director of this small but dogged consumer group for more than a decade” and “gone head-to-head with state regulators for not cracking down on [] autism denials.” (*Daily Journal Supplement*, May 12, 2010, p. 34.) Her efforts, working together with Consumer Watchdog Litigation Director Jerry Flanagan and co-counsel Strumwasser & Woocher LLP, led to a Los Angeles Superior Court decision declaring that the Department of Managed Health Care (DMHC) illegally adopted rules that delayed and denied decisions regarding coverage for autism treatments and improperly withheld public documents that revealed how they handled consumer complaints, and a Court of Appeal decision ordering the DMHC to stop upholding such illegal denials of coverage for autism treatments.

Pam received her B.A. in Sociology from UCLA and her J.D. from Pepperdine University School of Law. She was admitted to the California State Bar in 1995. Before joining Consumer Watchdog and serving as the organization’s Litigation Director for 15 years, Pam worked as Consumer Attorney for the California Public Interest Research Group (CALPIRG) and as a staff attorney for the Center for Law in the Public Interest (CLIP).

Daniel Sternberg

Danny is a staff attorney at Consumer Watchdog, where he works on healthcare access issues and consumer protection impact litigation, as well as enforcement of Proposition 103 which protects California insurance policyholders against discriminatory practices and overcharges.

Prior to joining Consumer Watchdog, Danny was an Excelsior Service Fellow at New York State Homes and Community Renewal, where he focused on affordable housing policy related to civil rights and housing discrimination. Danny was also an associate at Bantle & Levy LLP, where he litigated cases of employment discrimination and non-payment of wages.

During law school, he represented clients in Section 1983 actions in federal court with the Cardozo Civil Rights Clinic, helped secure unpaid wages for low-income workers with the Regional Solicitor of the U.S. Department of Labor, and served as the managing editor of the Cardozo Public Law, Policy, and Ethics Journal.

Danny graduated from the University of Arizona and the Benjamin N. Cardozo School of Law, where he was a Public Service Scholar and a New York State Pro Bono Scholar.

Danny is a member of the Disability Rights Bar Association and admitted to practice in New York and California, the U.S. District Courts for the Central District of California, the Southern District of California, and the U.S. Court of Appeals for the Ninth Circuit.

Benjamin Powell

Benjamin Powell is a staff attorney on Consumer Watchdog’s Litigation Team. While his primary focus is in the area of health insurance litigation, he also provides litigation support in other areas.

During law school, Powell was a member of the Loyola of Los Angeles Law Review, writing articles for the journal’s specialized “Developments in the Law” issue. His scholarship included an analysis of the shifting

employment status of California Uber drivers and a discussion of the fate of class action waivers under California contract law. Powell also served as a Coordinator for Loyola's Young Lawyers Program, providing students from local high schools with mentorship as well as training for a mock trial experience in front of actual Los Angeles Superior Court judges.

Powell received a B.A. in Political Science from UCLA and a J.D. from Loyola Law School in Los Angeles.

Ryan Mellino

Ryan Mellino is a staff attorney on Consumer Watchdog's Litigation Team. Mellino provides litigation support spanning across Consumer Watchdog's issue areas, including insurance, civil rights, and healthcare litigation.

During law school, Mellino externed with several different organizations. He spent time working on eviction defense with the Legal Aid Foundation of Los Angeles, on legal issues concerning inmates in L.A. County jails with the American Civil Liberties Union, and on system-wide homelessness prevention with the Los Angeles Homeless Services Authority. In his second summer of law school, Mellino began externing with Consumer Watchdog. He remained an extern through his final year of law school, before joining full-time after graduation.

Mellino received a B.A. in English Literature from Hunter College and a J.D. from the University of Southern California, Gould School of Law.

Kaitlyn Gentile

Kaitlyn Gentile is Consumer Watchdog's paralegal. She supports the litigation team in all state and federal court filings and provides administrative and research assistance.

Before joining Consumer Watchdog, Gentile worked at Lambda Legal, where she supported some of the nation's top litigators fighting to achieve the full civil rights of LGBT people and those living with HIV. In this capacity she assisted in preparing and filing impact litigation cases across the country, including 2015's *Obergefell v. Hodges* before the Supreme Court, which achieved marriage equality at the national level. She served as the project coordinator for the organization's work on issues affecting LGBT youth in foster care, juvenile justice, and homeless systems, co-authoring a 50-state policy analysis of out-of-home care systems and advocating for comprehensive nondiscrimination policies at the state and federal level. She also helped two undocumented young people from West Africa obtain Green Cards after they faced rejection and violence by family and community in their countries of origin due to their sexual orientations.

Gentile is a certified English Language Teacher and spent a year teaching in elementary school in Mallorca, Spain. She holds a B.A. in Sociology from the University of Massachusetts at Amherst.

Consumer Watchdog's Intervenor Work in California Under Voter-Approved Proposition 103

Consumer Watchdog has successfully advocated for California consumers by acting as an intervenor or public participant in automobile, homeowners, and medical malpractice insurance rate, rule, and class plan changes and rulemaking proceedings before the California Department of Insurance. Since 2003, Consumer Watchdog's rate challenges have collectively saved consumers over \$4.6 billion. Examples include:

- *In the Matter of the Rate Applications of Farmers Insurance Exchange Fire Insurance Exchange, and Truck Insurance Exchange*, PA-2023-00008 (Ins. Comm'r 2023), resulting in an annual savings of \$535 million in auto insurance premiums
- *In the Matter of the Rate Applications of Farmers Insurance Exchange Fire Insurance Exchange, and Mid-Century Insurance Company*, PA-2023-00009 (Ins. Comm'r 2023), resulting in an annual savings of \$276 million in homeowners insurance premiums
- *In the Matter of the Rate Application of CSAA Insurance Exchange*, PA-2023-00004 (Ins. Comm'r 2023), resulting in an annual savings of \$192.4 million in auto insurance premiums
- *In the Matter of the Rate Application of Allstate Insurance Company*, PA-2021-00005 (Ins. Comm'r 2023), resulting in an annual savings of \$2.8 million in auto insurance premiums
- *In the Matter of the Rate Applications of First National Insurance Company of America, Safeco Insurance Company of America, and Safeco Insurance Company of Illinois*, PA-2022-00002 (Ins. Comm'r 2023), resulting in an annual premium savings of \$7.8 million in homeowners insurance
- *In the Matter of the Rate Applications of Garrison Property and Casualty Insurance Company and USAA Casualty Insurance Company*, PA-2021-00004 (Ins. Comm'r 2023) resulting in an annual premium savings of \$7.31 million for USAA homeowners policyholders and \$1.16 million for Garrison homeowners policyholders
- *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Company*, PA-2022-00007 (Ins. Comm'r 2023) resulting in an annual premium savings of \$121 million in homeowners insurance
- *In the Matter of the Rate Application of Medical Insurance Exchange of California*, PA-2021-00003 (Ins. Comm'r 2023), resulting in a savings of \$1.41 million in medical malpractice insurance premiums
- *In the Matter of the Rate Applications of Farmers Insurance Exchange, Fire Insurance Exchange, and Mid-Century Insurance Co.*, PA-2021-00007 (Ins. Comm'r 2022), resulting in a savings of \$6.05 million in fire, allied, and other liabilities coverage
- *In the Matter of the Rate and Rating Plan Application of CSAA Insurance Exchange*, PA-2021-00002 (Ins. Comm'r 2021), resulting in a savings of \$14.75 million in homeowners insurance
- *In the Matter of the Rate Application of Homesite Ins. Co. of California*, PA-2020-00003 (Ins. Comm'r 2021), resulting in an annual savings of \$9.28 million in homeowners insurance
- *In the Matter of the Rate Application of Esurance Property and Casualty Insurance Company*, PA-2020-00001 (Ins. Comm'r 2020), resulting in an annual savings of over \$26.7 million in auto insurance premiums

- *In the Matter of the Rate and Rating Plan Application of Pacific Specialty Insurance Company*, PA-2019-00003 (Ins. Comm'r 2020), resulting in an annual savings of \$5.95 million in homeowners insurance
- *In the Matter of the Rate and Rating Plan Applications of Pacific Specialty Insurance Company*, PA-2019-00001 (Ins. Comm'r 2020), resulting in an annual savings of \$800,000 in annual renters, mobile home, and condo owners insurance
- *In the Matter of the Rate and Class Plan Applications of Liberty Mutual Fire Ins. Co.*, PA-2017-00007 and PA-2018-00001 (Ins. Comm'r 2018), resulting in an annual savings of \$3 million in auto insurance premiums
- *In the Matter of the Rate and Class Plan Applications of GEICO Cas. Co.*, PA-2017-00005 and PA-2017-00006 (Ins. Comm'r 2017), resulting in an annual savings of \$9.3 million in auto insurance premiums
- *In the Matter of the Rate Applications of Allstate Ins. Co. and Allstate Indemnity Co.*, PA-2015-00009 (Ins. Comm'r 2016), resulting in a savings of \$34.2 million in annual homeowners insurance premiums
- *In the Matter of the Rate Application of State Farm General Insurance Company*, PA-2015-00004, which resulted in an order requiring State Farm to lower its homeowners' rates overall by 7%, saving consumers \$78.6 million, and issue an additional \$110 million in refunds (the administrative orders in that matter are presently on appeal)
- *In the Matter of the Rate Application of Mercury Ins. Co.*, PA-2014-00010 (Ins. Comm'r 2015), resulting in a savings of \$7 million in annual auto insurance premiums
- *In the Matter of the Rates and Rate Applications of United Services Auto. Ass'n, Garrison Prop. and Cas. Ins. Co. and USAA Gen. Ins. Co.*, PA-2013-00009, PA-2013-00009, and PA-2013-00010 (Ins. Comm'r 2014), resulting in an annual savings of \$40.5 million in homeowners insurance premiums
- *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2013-00012 (Ins. Comm'r 2014), resulting in \$86 million in savings for annual homeowners insurance premiums
- *In the Matter of the Rate Application of Mercury Cas. Co.*, PA-2013-00004 (Ins. Comm'r 2013), resulting in over \$11 million of savings per year in homeowners insurance premiums
- *In the Matter of the Rate Application of Allstate Ins. Co., Allstate Indem. Co., and Northbrook Indem. Co.*, PA-2013-00003 (Ins. Comm'r 2013), resulting in over \$92 million in savings per year in auto insurance premiums
- *In the Matter of the Rates and Rating Plan Application of GEICO Indem. Co., GEICO Gen. Ins. Co. and Gov't Emp. Ins. Co.*, PA-2013-00002 (Ins. Comm'r 2013), resulting in a savings of \$9.4 million in annual auto insurance premiums
- *In the Matter of the Rate Application of Progressive West Insurance Company*, PA-2012-00008 (Ins. Comm'r 2013), resulting in savings of almost \$1.5 million in annual auto insurance premiums
- *In the Matter of the Rate Application of Coast Nat'l Ins. Co.*, PA-2012-00007 (Cal. Ins. Comm'r 2013), resulting in \$10.9 million in annual auto insurance premium savings

- *In the Matter of the Rate Applications of State Farm Mut. Auto. Co.*, PA-2012-00006 (Cal. Ins. Comm'r 2013), resulting in auto insurance premium savings of \$69 million per year
- *In the Matter of the Rate Application of Mercury Cas. Co.*, PA-2009-00009 (Cal. Ins. Comm'r 2013), resulting in savings of over \$16 million per year in homeowners insurance premiums
- *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2011-00010 (Cal. Ins. Comm'r 2013), resulting in savings of over \$157 million per year in homeowners insurance premiums
- *In the Matter of the Rate Application of Interinsurance Exch. of the Auto. Club*, PA-2012-00009 (Cal. Ins. Comm'r 2013), resulting in annual auto insurance premium savings of \$70 million
- *In the Matter of the Rate Application of Fed. Ins. Co., et al.*, PA-2012-00002 (Cal. Ins. Comm'r 2012), resulting in savings of over \$4.2 million per year in earthquake insurance premiums
- *In the Matter of the Rate Application of Chartis Prop. and Cas.*, PA-2011-000015 (Cal. Ins. Comm'r 2012), resulting in savings of over \$7.6 million per year in earthquake insurance premiums
- *In the Matter of the Rate Application of NORCAL Mut. Ins. Co.*, PA-2011-00007 (Cal. Ins. Comm'r 2012), resulting in savings of \$2.8 million per year in medical malpractice insurance premiums
- *In the Matter of the Rate Application of The Doctors Co.*, PA-2011-00006 (Cal. Ins. Comm'r 2012), resulting in savings of \$5.6 million per year in medical malpractice insurance premiums
- *In the Matter of the Rates of California State Auto. Ass'n Inter-Insurance Bureau*, PA-2010-00014 (Cal. Ins. Comm'r 2012), resulting in annual homeowners insurance premium savings of \$52 million
- *In the Matter of the Rate Application of Med. Protective Co.*, PA-2011-00008 (Cal. Ins. Comm'r 2011), resulting in annual premium savings of \$2.5 million
- *In the Matter of the Rate Application of Explorer Ins. Co.*, PA-2007-00013 (Cal. Ins. Comm'r 2008), resulting in annual auto insurance premium savings of \$8.2 million
- *In the Matter of the Rate Application of the Med. Protective Co.*, PA-05045074 (Cal. Ins. Comm'r 2005), resulting in savings of \$2 million per year in medical malpractice insurance premiums
- *In the Matter of the Rate Application of American Cas. Co.*, File No. PA-04039736 (Cal. Ins. Comm'r 2005), resulting in savings of \$1.6 million per year in medical malpractice insurance premiums
- *In the Matter of the Rate Application of Med. Protective Co.*, PA-04036735 (Cal. Ins. Comm'r 2004), resulting in savings of \$3.9 million per year in medical malpractice insurance premiums
- *In the Matter of the Rate Application of SCPIE Indem. Co.*, PA-02025379 (Cal. Ins. Comm'r 2004), resulting in savings of \$23 million per year in medical malpractice insurance premiums
- *In the Matter of the Rate Application of: NORCAL Mutual Insurance Co.*, PA 03032128 (Cal. Ins. Comm'r 2003), resulting in savings of \$11.6 million per year in medical malpractice insurance premiums

Other challenges before the CDI to insurers' earthquake and homeowners rate hikes, resulting in combined savings of over \$790 million, including:

- PA-04041210, PA-2007-00008, and PA-2007-00019, regarding the earthquake insurance rates of Safeco, GeoVera, and Fireman's Fund
- PA06093080, PA06093078, PA06092759/PA-2006-00016, PA-2006-00006, and PA-2007-00017, regarding the homeowners rates of Safeco, Fire Insurance Exchange, State Farm, Allstate, and Fireman's Fund

Hearings regarding California's Low Cost Auto Insurance Program (LCAIP) proposed rates in 2003, 2005, 2006, 2012, 2014, and 2015, 2016, and 2020:

- In 2012, Consumer Watchdog's participation and comments contributed to the Commissioner's decision requiring the California Automobile Assigned Risk Pool ("CAARP") to implement an overall rate decrease for the LCAIP of -2.8%, 11.1% lower than the overall +8.3% rate increase requested by CAARP
- In 2014, Consumer Watchdog's participation and comments contributed to the Commissioner's decision requiring CAARP to implement an overall LCAIP rate of +2.2%, 5.4% lower than the overall +7.6% rate increase requested by CAARP, resulting in an overall savings of \$140 thousand in annual premiums
- In 2015, Consumer Watchdog's participation resulted in an approved rate that was 10.5% lower than the rate requested by CAARP for a savings of nearly \$318 thousand in annual premiums
- In 2016 Consumer Watchdog's participation contributed to an approved rate that was 5.8% lower than requested, resulting in \$237 thousand in savings.
- In 2020, after Consumer Watchdog submitted comments, CAARP withdrew its requested +3.8% rate increase, resulting in a savings of \$259,000 in annual premiums

Several rulemaking proceedings implementing Proposition 103's prior approval and automobile rating factor requirements including:

- (1) the Gender Nondiscrimination rulemaking matter (REG-2018-00020), supporting the removal of gender as an optional rating factor;
- (2) the Intervenor Regulations rulemaking matter (RH-06092874) adopting amendments to update and clarify the regulations implementing Insurance Code 1861.10's public participation requirements;
- (3) the Mileage Verification rulemaking matter (RH-06091489) implementing amendments to the Automobile Rating Factors regulations to provide requirements for verified mileage programs;
- (4) the Prior Approval rulemaking matter (RH-05042749) adopting, among other amendments, the generic determinations included in the prior approval ratemaking formula pertaining to profit and expense provisions;
- (5) the Automobile Rating Factors rulemaking matter (RH-03029826, Cal. Dept. of Ins., June 2, 2005) in which Consumer Watchdog and other groups successfully petitioned for, and the Commissioner adopted amendments to, section 2632.8 of title 10 of the California Code of

- Regulations requiring that insurers base automobile insurance premiums primarily on how one drives and not on other optional factors such as zip code and marital status as required by Insurance Code section 1861.02(a);
- (6) the Persistency Rulemaking matter (Persistency Rulemaking, RH-402 (Cal. Dept. of Ins., April 18, 2003)); and
 - (7) a rulemaking matter adopting regulations to prevent insurers from requiring that motorists show proof of prior insurance to verify their accident record in violation of Insurance Code section 1861.02(c) (Accident Verification Rulemaking, RH 01015532 (Cal. Dept. of Ins., Sept. 3, 2003))

EXHIBIT C

**[THIS ENTIRE REPORT MAY BE MADE PUBLIC IN ACCORDANCE
WITH THE PROVISIONS OF CIC SECTIONS 735.5(a), (b) and (c)]**

**REPORT OF ALL VIOLATIONS ALLEGED IN THE MARKET CONDUCT
EXAMINATION OF THE RATING AND UNDERWRITING PRACTICES OF THE**

**MERCURY INSURANCE GROUP
(NAIC GROUP #0660)**

AS OF MAY 31, 2007

ADOPTED ON FEBRUARY 18, 2010

STATE OF CALIFORNIA



**DEPARTMENT OF INSURANCE
MARKET CONDUCT DIVISION
FIELD RATING AND UNDERWRITING BUREAU**

NOTICE REGARDING CONFIDENTIALITY

The provisions of Section 735.5(a), (b), and (c) of the California Insurance Code describe the Commissioner's authority and exercise of discretion in the use and/or publication of any final or preliminary examination report or other associated documents. Section 12938 of the California Insurance Code requires the publication of certain legal documents and examination reports.

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DEPARTMENT OF INSURANCE

CONSUMER SERVICES AND MARKET CONDUCT BRANCH
FIELD RATING & UNDERWRITING BUREAU
45 Fremont Street, 22nd Floor
San Francisco, CA 94105



February 18, 2010

The Honorable Steve Poizner
Insurance Commissioner
State of California
45 Fremont Street
San Francisco, California 94105

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Sections 730 and 1857.2 of the California Insurance Code, an examination was made of the rating and underwriting practices and procedures in California of the **MERCURY INSURANCE GROUP** (NAIC Group #0660), comprised in California of:

MERCURY CASUALTY COMPANY (NAIC #11908, CDI #1952-1)
MERCURY INSURANCE COMPANY (NAIC #27553, CDI #2143-6)
CALIFORNIA AUTOMOBILE INSURANCE COMPANY (NAIC #38342, CDI #2343-2)
CALIFORNIA GENERAL UNDERWRITERS INSURANCE COMPANY, INC.
(NAIC #31046, CDI #3136-9)
and
AMERICAN MERCURY INSURANCE COMPANY (NAIC #16810, CDI #2253-3).

The Companies subject to this examination are hereinafter referred to as either Mercury Casualty Company (MCC), Mercury Insurance Company (MIC), California Automobile Insurance Company (CAIC), California General Underwriters Insurance Company, Inc. (CGUICI), and American Mercury Insurance Company (AMIC) individually, or collectively as Mercury, or the Companies. The California Department of Insurance will be referred to as the Department.

CGUICI and AMIC had only nominal premium writings in California. Therefore, these companies were subject to only limited review, and no policies issued in these companies were examined.

FOREWORD

This examination covered the rating and underwriting practices of the aforementioned Companies during the period from March 1, 2007 through May 31, 2007. The examination was made to discover, in general, if these and other operating procedures of the Companies conform to provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), and other applicable insurance law.

This report contains all alleged violations of laws that were identified during the examination. A separate report containing only alleged violations, if any, of CIC § 790.03 and its implementing regulations is made available for public inspection and is published on the Department's internet site at www.insurance.ca.gov, pursuant to § 12938 of the California Insurance Code. No violations of CIC § 790.03 or its implementing regulations were cited during this examination.

This report is written in a "report by exception" format. This report does not present a comprehensive overview of the subject insurer's practices. The report contains only a summary of pertinent information about the lines of business examined and of the non-compliant or problematic activities or results that were discovered during the course of the examination, along with the insurer's proposals for correcting the deficiencies. In the event that a non-compliant activity was not discovered during the examination, the insurer remains responsible for correcting that practice. Failure to identify, comment on, or criticize non-compliant activities in this state or other jurisdictions does not constitute acceptance of such activities.

Alleged violations identified in this report, any criticisms of practices, and the Companies' responses, if any, have not undergone a formal administrative or judicial process.

SCOPE OF THE EXAMINATION

To accomplish the foregoing, the examination included:

1. A review of the rates, rating plans, forms, and underwriting rules made or adopted by the Companies for use in California, including a review of records of data, statistics, or information maintained by the Companies in support of or relating to such rates, forms, and rules.
2. A review of the application of such rates, forms, and rules by means of an examination of policy files and related records.
3. A review of the Companies' advertising materials, which consisted of print advertisements distributed through direct mail, media commercials, and the Companies' internet site at www.mercuryinsurance.com.
4. A review of the Department's market analysis results, a review of any consumer complaints and inquiries received by the Department about these Companies in the year prior to the start of the examination, a review of prior market conduct examination reports on these Companies, and a review of any prior enforcement actions by the Department regarding these Companies.

The examination was conducted at Mercury's branch office in Westlake Village, California.

EXECUTIVE SUMMARY

This examination included a review of policies that were issued, renewed, cancelled, non-renewed, or declined during the period of March 1, 2007 through May 31, 2007, referred to as the “review period,” and a review of the Companies’ general practices and procedures related to rating, underwriting, advertising and marketing, and risk selection. The examiners reviewed 343 in-force policies and 242 terminated and declined policies. In the course of the examination, the examiners identified 27 rating errors, 18 non-rating errors, and 12 termination transaction errors. Within the scope of this report, 54 general practices were alleged as being in violation of California law. A total of \$77,853 in premium has been returned to consumers as a result of this examination.

The main areas of non-compliance identified in this examination included the failure to implement objective and specific eligibility guidelines across all lines of business. In the Companies’ commercial lines programs, the main areas on non-compliance included the use of unfiled rates and the non-renewal of risks based on the agents’ requests. In personal lines, the misapplication of credits, the failure to provide a specific reason for policy cancellation and non-renewal, and the improper application of accident surcharges are three of the primary areas of concern.

RESULTS OF THE REVIEW OF MARKET ANALYSIS,
CONSUMER COMPLAINTS AND INQUIRIES, PREVIOUS EXAMINATIONS,
AND PRIOR ENFORCEMENT ACTIONS

The Companies were the subject of 296 consumer complaints between June 1, 2006 and June 1, 2007. With Mercury Insurance Company, many of the complaints were due to failure to return premium in a timely manner following policy cancellation. With Mercury Casualty Company, several complaints were due to the application of a policy surcharge for an accident that appeared on a Comprehensive Loss Underwriting Report (CLUE) without first conducting an investigation. The examiner focused on these areas in the course of the policy review.

The most recent examination of rating and underwriting practices of Mercury Insurance Group included a review period of January 1, 2001 through August 31, 2002. The primary areas of non-compliance identified in the examination report were allowing the placement of statutory good drivers in programs without consistently providing such drivers adequate advice about different premium, coverage, and payment options available to them in other programs; cancelling personal automobile policies without consistently availing applicants of the opportunity to exclude ineligible non-good drivers; requiring a supporting automobile policy to purchase a homeowners policy; using driving record violation information in some cases in which there was only a Failure to Appear with respect to the offense; and preventing insureds from making changes to their policy coverages and from re-applying for coverage due to past non-renewals for personal lines. For commercial lines, a significant area of noncompliance noted was the failure to consistently provide 30 days advance notice of cancellation for commercial automobile insureds. Following the 2002 examination and the identification of the abovementioned issues, Mercury Insurance Group was the subject of an enforcement action taken by the Department on June 2, 2006 which resulted in a Stipulation and

Order and a penalty of \$300,000. The examiners focused on these areas during the current exam, noting that personal automobile risks which become ineligible due to a non-good driver are only informed that they may reapply for coverage with the non-good driver excluded, rather than allowing an the exclusion as a means of continuing coverage under the current policy. This issue is discussed in the final section of this report. It was also noted that the Companies are considering unresolved Failure to Appears in the determination of eligibility for personal automobile programs, preventing insureds from making changes to their personal automobile policy coverages by instructing Agents not to increase Mercury's exposure in any way, and failing to provide adequate notice of cancellation for commercial multiple peril insureds. These issues are discussed in the final section of this report. Additionally, other repeat criticisms, or similar criticisms, from both the 2002 and the 1998 examination were made in the current examination. Each criticism which has been previously made is so noted in the Summary of Exam Results section of this report.

METHOD OF DOING BUSINESS

Mercury writes business in California through approximately 1,019 agents and 227 brokers, though the Companies discontinued doing business through brokers in January 2009. All commercial lines underwriting functions are performed at either the Rancho Cucamonga, California or the Brea, California locations, while personal lines underwriting functions are performed at various locations throughout the State. Claims processing centers for all lines of business are also located throughout California. The Companies' underwriting and claims processing centers are located in San Diego, Sacramento, Brea, Camarillo, Rancho Cucamonga, Santa Clarita, and San Clemente.

Managing General Agents

Mercury does not utilize managing general agents.

AUTHORIZED CLASSES OF BUSINESS

The Companies are authorized to transact the following classes of business in California:

<u>Class No.</u>	<u>Class Of Insurance</u>	<u>MIC</u>	<u>MCC</u>	<u>CAIC</u>	<u>CGUICI</u>	<u>AMIC</u>
2.	Fire	X	X	X		X
3.	Marine	X	X	X		X
5.	Surety	X	X	X		X
6.	Disability	X	X	X		
7.	Plate Glass	X	X	X		X
8.	Liability	X	X	X	X	X
10.	Common Carrier Liability	X		X		X
11.	Boiler and Machinery	X		X		
12.	Burglary	X	X	X		X
13.	Credit	X		X		
14.	Sprinkler	X	X	X		
15.	Team and Vehicle	X		X		X
16.	Automobile	X	X	X	X	X
18.	Aircraft	X		X		
20.	Miscellaneous	X	X	X		X

PREMIUM AND LOSS EXPERIENCE STUDY

The following tables show the California premium and loss experience for each Mercury company by line of business for calendar year 2006, based on data from the Statutory Page 14 of the Annual Statement filed with the Department. (No table is shown for CGUICI as no figures were reported for this Company in 2006.) The “Mercury Insurance Group, Consolidated” table includes combined California premium and loss experience for all companies. The loss ratio for each line is calculated by dividing Direct Losses Incurred by Direct Premiums Earned. (Figures with no meaning due to division by zero are indicated as “NM,” as are calculations including a negative premium earned. All ratios are capped at 999%.)

**Mercury Insurance Group, Consolidated
California Premium and Loss Experience by Line for the Year 2006**

Line Of Coverage	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Fire	6,749,024	6,356,269	2,491,913	39%
Allied lines	1,141,528	1,080,793	44,431	4%
Homeowners multiple peril	196,753,111	185,769,726	54,857,413	30%
Commercial multiple peril (non-liability portion)	23,361,816	22,146,546	5,911,837	27%
Commercial multiple peril (liability portion)	7,169,052	6,813,154	2,515,049	37%
Earthquake	(222,428)	(153,184)	(34,348)	NM
Other liability	6,283,922	5,877,126	264,859	5%
Private passenger auto liability	1,099,482,633	1,080,770,426	526,343,593	49%
Commercial auto liability	66,304,643	64,930,345	32,430,381	50%
Private pass auto physical damage	823,081,995	817,225,843	515,255,159	63%
Commercial auto physical damage	23,628,901	23,937,510	9,556,129	40%
Surety	3,213	3,062	0	0%
Aggregate write-ins for other lines of business	12,800,962	8,916,995	5,870,480	66%
TOTALS	\$2,266,538,372	\$2,223,674,611	\$1,155,506,896	52%

Mercury Insurance Company
California Premium and Loss Experience by Line for the Year 2006

Line Of Coverage	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Private passenger auto liability	727,603,018	713,136,642	344,601,846	48%
Private pass. auto physical damage	564,803,766	557,232,702	336,663,788	60%
TOTALS	\$1,292,406,784	\$1,270,369,344	\$681,265,634	54%

Mercury Casualty Company
California Premium and Loss Experience by Line for the Year 2006

Line Of Coverage	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Fire	6,749,024	6,356,269	2,491,913	39%
Allied lines	1,141,528	1,080,793	44,431	4%
Homeowners multiple peril	196,753,111	185,769,726	54,857,413	30%
Commercial multiple peril (non-liability portion)	23,361,816	22,146,546	5,911,837	27%
Commercial multiple peril (liability portion)	7,169,052	6,813,154	2,515,049	37%
Earthquake	(222,428)	(153,184)	(34,348)	NM
Other liability	6,283,922	5,877,126	264,859	5%
Private passenger auto liability	252,311,149	252,455,134	123,139,954	49%
Commercial auto liability	66,304,643	64,930,345	32,430,381	50%
Private pass auto physical damage	178,510,230	182,110,355	116,885,053	64%
Commercial auto physical damage	23,628,901	23,937,510	9,556,129	40%
TOTALS	\$761,990,948	\$751,323,774	\$348,062,671	46%

California Automobile Insurance Company

California Premium and Loss Experience by Line for the Year 2006

Line Of Coverage	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Private passenger auto liability	119,568,466	115,178,650	58,601,793	51%
Private pass. auto physical damage	79,767,999	77,882,786	61,706,318	79%
TOTALS	\$199,336,465	\$193,061,436	\$120,308,111	62%

American Mercury Insurance Company

California Premium and Loss Experience by Line for the Year 2006

Line Of Coverage	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Surety	3,213	3,062	0	0%
Aggregate write-ins for other lines of business	12,800,962	8,916,995	5,870,480	66%
TOTALS	\$12,804,175	\$8,920,057	\$5,870,480	66%

LINES OF BUSINESS REVIEWED

The Mercury Insurance Group examination included a review of Private Passenger Automobile, including the California Automobile Assigned Risk Plan and the California Low Cost Automobile Insurance Program, Homeowners, Commercial Automobile, and Commercial Multiple Peril business.

Private Passenger Automobile

Rates Filed: June 28, 2006

Rate Page Edition: November 13, 2006

Mercury Insurance Group provides voluntary private passenger automobile policies through three separate companies: Mercury Insurance Company, Mercury Casualty Company, and California Automobile Insurance Company. MIC is only available to California Good drivers, whereas MCC and CAIC are available to all drivers, subject to the Companies' eligibility guidelines. The MIC base rate is 13.5% lower than those of MCC and CAIC. MCC and CAIC policies, which have identical coverages, rates, and eligibility guidelines, provide slightly more coverage than the MIC policy form. Each underwriting company offers its own, differing payment plan options. All companies offer the same discounts: a Good Driver Discount; a Good Student Discount; Group Discounts for Engineers, Scientists, Educators, the California Medical Association, the Los Angeles County Bar Association, and Certified Public Accountants; a discount for Multiple Automobiles on a policy; a discount for Multiple Policies with the Group; a Mature Driver Discount; Anti-Theft Device Discounts; and a Persistency Discount. Mercury relies on its agents to ensure that insureds are informed of all coverage and payment plan options, and that they are placed in the company which best suits their needs.

California Automobile Assigned Risk Plan (CAARP)

Insurers that sell private passenger automobile policies are required by law to accept risks that are assigned to them by the California Automobile Assigned Risk Plan (CAARP). CAIC issues policies assigned by CAARP using the rates, rating plans, and forms prescribed by the Plan.

California Low Cost Automobile Insurance Program

Mercury issues California Low Cost Automobile Insurance Program policies submitted by brokers using the rates, rating plans, and forms prescribed by the Program. These policies are written in CAIC.

Homeowners

HO-3: Rates Filed: September 27, 2002; Rate Page Edition: December 15, 2002

HO-4: Rates Filed: October 1, 2003; Rate Page Edition: October 1, 2003

HO-6: Rates Filed: October 1, 2003; Rate Page Edition: October 1, 2003

Umbrella: Rates Filed: March 9, 2005; Rate Page Edition: August 11, 2005

Mercury provides residential property and liability coverages under its Standard and Superior HO-3 policies for homeowners, and its Standard and Superior HO-6 policies for condominium owners. Eligibility for the Standard and Superior policies is identical, and all policies are issued by Mercury Casualty Company. The base rates of the Superior policies are 15% higher than those of the Standard policies, and coverages are broadened accordingly. Both program tiers offer several optional coverages, including umbrella, a range of deductibles, and increased coverage limits. MCC offers credits for fire/burglary alarms, newer homes (HO-3 only), gated communities, increased deductibles, persistency (HO-3 only), roof construction (HO-3 only), dwelling area (HO-3 only), and multiple policies.

Mercury also offers a HO-4 Renters Policy, issued by Mercury Casualty Company. Credits are offered under this policy for fire/burglary alarms, gated communities, increased deductibles, and multiple policies.

Commercial Automobile

Rates Filed: October 8, 2003

Rate Page Edition: May 1, 2004

Mercury offers three types of commercial automobile policies – Policy Type 2, Policy Type 3, and Policy Type 4 – all issued in Mercury Casualty Company. Policy Type 2 is the preferred policy, with approximately a 17% downward deviation in the base rate from Policy Type 3, and approximately a 45% downward deviation in the base rate from Policy Type 4. Eligibility for each policy type is based on the type of operation and driver characteristics, but all risks are required to carry coverage for workers' compensation, and for general liability if the vehicles have attached equipment. Mercury's target market for this line of business includes small commercial auto risks and fleets, specializing in artisan occupations, such as construction, pool cleaning, electrical, plumbing, appliance repair, gardening, and landscaping.

Commercial Multiple Peril

Businessowners (BOP)

Rates Filed: March 29, 2002

Rate Page Edition: July 1, 2002

Commercial Multiple Peril Package

Rates Filed: March 29, 2002

Rate Page Edition: July 1, 2002

Mercury offers a commercial multiple peril package policy and a businessowners policy, both written in Mercury Casualty Company.

The businessowners policy is designed for smaller-sized risks in certain eligible classifications, which include Print & Graphic Design, Office Contents, Retail & Service, Apartments, and Lessor's Risk. Each BOP provides liability and property coverages. In addition, the policy for each specific classification is endorsed with additional coverages, tailored to suit the

needs of each operation.

All other risks are written as commercial multiple peril package policies under one of two plans, Basic or Comprehensive. The Basic Plan policy is written on a named perils coverage form, while the Comprehensive Plan policy is written on a special coverage form, including theft.

DETAILS OF THE CURRENT EXAMINATION

The following sections of the report provide summary information regarding the policy review, and regarding the statutes and regulations that were cited during the examination.

POLICY REVIEW RESULTS

The policy sample was reviewed to determine if the Companies were properly and consistently applying their adopted rates, rating plans and underwriting rules at the individual policy level. The policies were selected at random from the Companies' listing of policies issued, renewed, non-renewed, cancelled, or declined during the period of March 1, 2007 through May 31, 2007. The results of this review are listed below on the In-Force Policies table and the Terminated and Declined Transactions table.

The In-Force Policies table shows the number of policies reviewed, the number of policies with individual rating errors, the number of policies with non-rating errors, and the error ratios by program and company resulting from this examination. In general, policies containing rating errors that result in premium overcharges are corrected by policy endorsement, and refunds are made to the policyholder. Policies with errors that result in undercharges are marked for corrective action at the next policy renewal date. Non-rating errors include forms, documentation, and other errors not affecting premium. (Errors that result in premium changes under \$5 or 1% of the policy premium, whichever is greater, are counted as non-rating errors.)

The Terminated and Declined Transactions table shows the number of termination transactions reviewed per line of business. These include policies which had been cancelled, non-renewed, or declined. The number of policies with errors noted in the termination transaction is shown, as well as the overall ratio of terminations with errors.

MERCURY INSURANCE GROUP

Policy Review Result Summary Tables

In-Force Policies

Program	No. of Policies Reviewed	No. with Rating Errors	Rating Error Ratio %	No. with Non-Rating Errors	Non-Rating Error Ratio %
Private Passenger Automobile – MIC, MCC, CAIC					
Total Private Passenger Auto	143	14	9.8%	4	2.8%
Homeowners – MCC					
Total Homeowners	100	2	2%	4	4%
Commercial Automobile – MCC					
Total Commercial Auto	50	3	6%	5	10%
Commercial Multiple Peril – MCC					
Total Comm'l Multiple Peril	50	8	16%	5	10%
TOTALS	343	27	7.9%	18	5.2%

Terminated and Declined Transactions

Program	No. of Policies Reviewed	No. with Errors	Error Ratio %
Private Passenger Automobile – MIC, MCC, CAIC			
Declined, Non-Renewed, Cancelled			
Total Private Passenger Automobile	119	5	4.2%
Homeowners – MCC			
Declined, Non-Renewed, Cancelled			
Total Homeowners	51	3	5.9%
Commercial Automobile – MCC			
Declined, Non-Renewed, Cancelled			
Total Commercial Automobile	30	2	6.7%
Commercial Multiple Peril – MCC			
Declined, Non-Renewed, Cancelled			
Total Commercial Multiple Peril	42	2	4.8%
TOTALS	242	12	5.0%

GENERAL PRACTICES REVIEW RESULTS

The examination included a review of the rates, rating plans, forms, and underwriting rules made or adopted by Mercury for use in California. The table below identifies the provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), or other pertinent law for which violations were alleged or to which reference was made during the examination. A total of 42 laws were cited based on the insurer's errors and general practices. Each law listed on the following table may be due to a general practice which affects many policyholders. One practice can also violate multiple laws or occur across multiple companies within an insurer group.

SUMMARY OF RELEVANT LAWS

	Code Citation	Description of Law
1.	CIC § 332	Each party to a contract of insurance shall communicate to the other, in good faith, all the facts within his knowledge which are material to the
2.	CIC § 381	Required contents of a policy; (a) through (f).
3.	CIC § 677.2(c)	The notice of cancellation for commercial insurance shall be given at least 30 days prior to the effective date of cancellation.
4.	CIC § 790.06	The Commissioner may determine a practice to be unfair or deceptive in accordance with this section.
5.	CIC § 791.10(e)	An adverse underwriting decision and the specific reasons for such a decision shall be provided in writing by the insurance institution at the time of the decision.
6.	CIC § 1857	Documentation must be maintained in support of rates charged.
7.	CIC § 1861.01(c)	Insurance rates for most property and casualty lines must be approved by the Commissioner prior to their use.

	Code Citation	Description of Law
8.	CIC § 1861.02(b)(2)	The rate charged for a Good Driver Discount policy shall comply with subdivision (a) and shall be at least 20% below the rate of the insured would otherwise have been charged for the same coverage.
9.	CIC § 1861.02(b)(1)	Every person who meets the criteria of CIC Section 1861.025 shall be qualified to purchase a Good Driver Discount Policy from the insurer of their choice.
10.	CIC § 1861.025	This section sets forth the criteria in which a person is qualified to purchase a Good Driver Discount policy.
11.	CIC § 1861.03(c)(1)	Notwithstanding any other provision of law, a notice of cancellation or non-renewal of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (A) nonpayment of premium; (B) fraud or material misrepresentation affecting the policy or the insured; (C) a substantial increase in the hazard insured against.
12.	CIC § 1861.05(a)	Rates shall not be excessive, inadequate, or unfairly discriminatory.
13.	CIC § 10101	Insurers must provide a copy of the California Residential Property Insurance disclosure statement at time of application and at initial renewal.
14.	CIC § 10102	The Residential Property Insurance disclosure statement shall contain the language as included in this section. Insurers shall provide the disclosure statement to the insured on an every-other-year basis at the time of the renewal.
15.	CIC § 11580.07	No insurer which is admitted to issue a policy of automobile insurance shall require any insured to purchase or maintain automobile collision coverage for the insured motor vehicle as a condition to the issuance or maintenance of comprehensive coverage for such vehicle, unless the policy requires the purchase of both coverages.
16.	CIC § 11624(e)	CAARP Plan rates shall not be inadequate, excessive, or unfairly discriminatory.
17.	CIC § 11628(c)(1)	No admitted insurer shall fail or refuse to accept an application for motor vehicle liability insurance, or cancel that insurance, solely for the reason that the applicant or insured is employed in a specific occupation, or is in on active duty with the US Armed Forces.

	Code Citation	Description of Law
18.	CIC § 11628.5	No admitted insurer shall fail or refuse to accept an application from a handicapped person for insurance, or to issue or cancel that insurance under conditions less favorable to handicapped persons than non-handicapped persons; nor shall a handicap itself constitute a higher rate, premium, or charge.
19.	CIC § 11628.7	No admitted insurer shall fail or refuse to accept an application from a blind person for insurance (a driver exclusion may be required); nor shall the insurer cancel that insurance solely on the basis that the operators of the insured vehicle are changed frequently.
20.	CIC § 11629.77(a)	A low-cost automobile insurance policy issued pursuant to the program shall only be cancelled for the reasons outlined in subsections (1) through (4).
21.	CCR § 2360.0(b)	“Eligibility Guidelines” are specific, objective factors, or categories of specific, objective factors, which are selected and/or defined by an insurer, and which have a substantial relationship to an insured’s loss exposure.
22.	CCR § 2360.2	Insurers shall maintain objective, specific eligibility guidelines for every line of insurance offered for sale to the public.
23.	CCR § 2360.3	An insurer shall charge each insured the lowest premium for which the insured qualifies.
24.	CCR § 2360.4	It shall be the insurer’s responsibility to determine the lowest premium for which each insured qualifies. If the insurer delegates this responsibility to its agent, the insurer shall remain responsible for the agent’s determination.
25.	CCR § 2360.6	The insurer shall keep documentation in the underwriting file for every policy, identifying all information which the insurer considered in determining the premium charged.
26.	CCR § 2632.5	This section outlines the rating factors allowable by California Law.
27.	CCR § 2632.5(c)(1)(A)	The first mandatory rating factor should be determined from the public record of traffic violation convictions available from the DMV.

	Code Citation	Description of Law
28.	CCR § 2632.5(c)(1)(B)	Principally at-fault accidents shall be determined pursuant to CIC § 2632.13.
29.	CCR § 2632.12(b)	If a good driver is not eligible to purchase a good driver discount policy because of the driving safety record or years of driving experience of any other person, the good driver shall be eligible to purchase a good driver discount policy which excludes such other persons from coverage.
30.	CCR § 2632.13(c)	A driver may be considered principally at-fault in an accident if the driver's actions or omissions were at least 51% of the proximate cause of the accident.
31.	CCR § 2632.13(f)	If a driver has insurance that provided coverage for an accident, a subsequent insurer which did not provide coverage at the time of the accident and to whom an application for the issuance of a policy of insurance is made, or from whom a renewal policy is offered, may not consider the driver to be principally at-fault for the accident unless one of the three circumstances outlined in this section applies.
32.	CCR § 2632.13(g)	If a driver did not have insurance that provided coverage for an accident, and if no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, an insurer to whom an application for the issuance or renewal of a policy of automobile insurance is made may consider a driver to be principally at-fault if the insurer has sufficient information to make that determination. For the purpose of this Subsection, the following shall apply: (1) through (3).
33.	CCR § 2632.13(i)	Notwithstanding any other provision in this section, in determining a driver's at-fault accident history, a driver's declaration, under penalty of perjury, attesting to his or her at-fault accident history, shall be sufficient proof of that accident history in the absence of contrary information from an independent source. If an insurer discovers that the declaration contains fraudulent or material misrepresentation, the insurer may use that information to rate the policy, may cancel the policy pursuant to CIC Sections 661 and 1861.03(c)(1) and take any other action authorized by law.
34.	CCR § 2632.14(a)(1)	Every insurer is required to offer to sell to a good driver a good driver discount policy that contains only the minimum limits of liability coverage required by California law.

	Code Citation	Description of Law
35.	CCR § 2632.14(a)(2)	Every insurer is required to offer to sell to a good driver a good driver discount policy that contains comprehensive coverage or collision coverage, or both such coverages, in addition to liability coverage.
36.	CCR § 2632.14(a)(3)	Every insurer is required to offer to sell to a good driver a good driver discount policy that contains any of the limits of coverage, the types of coverage, and amounts of deductibles that the insurer offers to sell to the public.
37.	CCR § 2632.14(b)	Insurers shall offer and sell good driver discount policies under the same terms and conditions and with the same options and services that the insurer offers and sells to the public, including, but not limited to, terms for payment of premiums.
38.	CCR § 2632.19(f)	If a substantial increase in hazard insured against exists because of the violation points or circumstances of any person other than the insured, then a substantial increase in hazard insured against shall not exist of the insured excludes such other person from coverage.
39.	CCR § 2644.50	As a means to determine whether a rate previously approved remains in compliance with the statutory standard set forth in CIC § 1861.05(a), the Commissioner may require an insurer operating with a rate approved three years ago or longer in the homeowners multiple peril and private passenger automobile liability and physical damage lines of business to file a rate application.
40.	CAARP Manual Rule 24.F.1	This manual rule outlines penalty point assignments for accidents.
41.	CAARP Manual Section 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.
42.	CLCAIP Manual Section 33.B.1	A low-cost automobile insurance policy issued pursuant to the program shall only be cancelled for the reasons outlined in subsections (a) through (d).

SUMMARY OF EXAMINATION RESULTS

During the Mercury Insurance Group examination, 54 general practices were alleged as being in violation of California law. In response to each of the Department's allegations of non-compliance, the Companies were required to identify remedial or corrective action that was or will be taken to correct the deficiency. Regardless of actions taken or proposed by the insurer in this report, it is the insurer's obligation to ensure that compliance with California law is maintained continuously. Any non-compliant practice identified in this report may extend to other jurisdictions. The Companies were asked if they intend to take corrective action in all jurisdictions where applicable. In response, the Companies stated, "The states in which we operate outside California have their own set of unique regulations and their own regulatory bodies (i.e. Department of Insurance). We will comply with the regulations in the individual states and any other issues, identified by the local Department of Insurance."

A total of \$77,853 in premium has been returned to consumers as a result of this examination. Mercury's implementation of corrective actions based on this examination will continue to be reviewed by the Field Rating and Underwriting Bureau.

Private Passenger Automobile

1. The following deficiencies were noted in the application forms used for MIC, MCC, and CAIC for private passenger auto business:
 - a. The 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.
CIC § 1861.05(a); CCR §2632.13(c)
 - b. Regarding convictions for alcohol related incidents, hit-and-run, reckless driving, manslaughter, or refusal to submit to an intoximeter test, the 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.
CIC §§ 1861.025 and 1861.05(a); CCR Section 2632.5

Summary of Insurer Response: Regarding item a., Mercury stated that its applications do require accident details, and that agents are instructed to provide chargeability and injury information as a part of the description. To clarify, the Companies have agreed to amend the application to specifically request the information necessary to determine and document that accidents are principally at-fault and thus chargeable, and will provide a copy of the amended application to the Department for review prior to implementation. Additionally, the Companies have agreed to modify the applications and manual to only request information regarding the convictions outlined in item b. above to the previous 10 years.

Summary of Department's Evaluation of Insurer Response: With respect to item b., Mercury indicated that it would limit requests for information to the previous 10 years; however, with exception to alcohol-related offenses, the period of time relevant to the rating of the policy is only three years. Additionally, Mercury has not indicated when the new application and manual revision mentioned above for item a. will be completed. Therefore these are unresolved issues that may result in administrative action.

2. Mercury Insurance Company renewal offers fail to disclose to insureds that Mercury Insurance Group also provides automobile insurance policies through Mercury Casualty Company and California Automobile Insurance Company. Though MIC offers the lowest rates, MCC and CAIC policies provide coverage that is broader than that provided by the MIC policy. 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. 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.

CIC §§ 1861.02(b)(1) and 1861.05(a); CCR § 2632.14(b)

Summary of Insurer Response: MIC stated that it will modify its renewal offers to include disclosure of the availability of the MCC and CAIC programs. The amended offer notice will be put into use upon implementation of the rate and class plan filings that are currently pending approval with the Department. A sample of the amended renewal offer will be submitted to the Department for review prior to its implementation, with an expected submission date of March 1, 2010.

Summary of Department's Evaluation of the Insurer's Response: Mercury has not provided the date by which it will take the corrective action. Therefore this is an unresolved issue that may result in administrative action.

3. With respect to Mercury Insurance Group's Telephone Report, the following deficiencies were noted:

- a. The policy review disclosed that Mercury is inconsistent in its practices surrounding its Telephone Interviews and follow-up surveys. For instance, it was noted that, upon failure to complete the Telephone Interview, some insureds were sent follow-up surveys, whereas others were not and coverage was simply continued. Upon failure to complete the follow-up survey, if sent, it was noted that some insureds were non-renewed, whereas others were not. Additionally, the review revealed that Mercury may waive an interview for some insureds, but does not provide any guideline or rule as to when such a waiver is granted. The lack of consistency with this procedure, and the lack of a rule or guideline with respect to waivers, may result in the dissimilar treatment of similar risks. This is a repeat criticism from the 2002 examination. This issue was included in the enforcement action that was taken following the 2002 examination, and Mercury's continued failure to employ its telephone survey process in a consistent manner violates the terms of the 2006 order that resulted from that action.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

- b. Following the 1998 rating and underwriting examination of the Mercury Insurance Group, the Companies agreed to amend the telephone report and follow-up survey with respect to accidents to request the information necessary to determine chargeability, and to determine whether the incident involved bodily injury. Mercury amended the telephone report, but failed to address the follow-up survey. The failure to collect the information necessary to determine accident chargeability creates the potential for an improper accident surcharge, and thus may result in excessive rates.

CIC § 1851.05(a); CCR § 2632.13(c)

Summary of Insurer Response: Mercury neglected to address its failure to amend the follow-up survey, which it agreed to do following the 1998 rating and underwriting examination of the Mercury Insurance Group. However, as its final resolution to the items noted above, Mercury stated that the telephone report process, including the follow-up survey, was eliminated in March 2009.

4. The following deficiencies were noted with respect to Mercury Insurance Group's application of accident surcharges:
 - a. The policy review and multiple consumer complaints revealed that 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. If an insured's CLUE report indicates that an incident involved bodily injury, Mercury will charge two points for the accident and withhold the Good Driver Discount that may have otherwise applied. 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 are in contravention of current regulations and may result in the application of

excessive rates. These are repeat criticisms from the 1998 and 2002 examinations. CIC §§ 1861.02(b)(2) and 1861.05(a); CCR §§ 2632.5(c)(1)(B), 2632.13(c), 2632.13(f), 2632.13(g), and 2632.13(i)

- b. The policy review disclosed that, in instances when an insured's Motor Vehicle Report (MVR) discloses an accident and an accident inquiry is made, it is Mercury's practice to charge for a two-point bodily injury accident if no response to the inquiry is received. This practice may lead to the improper charging of a bodily injury accident in instances where the accident only resulted in property damage, and thus may result in excessive rates. A similar criticism was raised in the 1998 examination.
CIC § 1861.05(a); CCR §§ 2632.5(c)(1)(B), 2632.13(c), 2632.13(f), and 2632.13(g)

Summary of Insurer Response: With respect to item a., Mercury stated that accidents indicated as chargeable and the presence of injuries, if any, on the CLUE report can be acted upon without additional verification, and asserts that the Department has no statutory or regulatory authority to mandate otherwise. Mercury also stated that it will charge for incidents listed as at-fault on the CLUE report, regardless of the dollar amount, because the amount paid or reserved is not necessarily reflective of the actual amount paid. Regarding item b. above, MCC and CAIC have agreed to charge one violation point in such situations, effective immediately. For insureds with MIC, failure to respond to a request for accident details will result in policy cancellation. Mercury noted that, at the time of the review, insureds with MCC and CAIC would have only been affected by this practice with respect to Good Driver Discount eligibility, as there was no difference in the surcharge for a property damage-only accident versus a bodily injury accident.

Summary of Department's Evaluation of Insurer Response: The Companies have not agreed to amend the practice outlined in item a. above. Therefore this item remains unresolved and may result in administrative action.

5. 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. Thus, this practice results in excessive rates.
CIC §§ 1861.01(c) and 1861.05(a); CCR § 2632.5

Summary of Insurer Response: Mercury stated that the Broad Form filing guarantees liability coverage for all vehicles owned or operated by the insured, including those normally excluded from coverage under the terms of the policy. It applies a 15% surcharge to account for this increased exposure, and that this surcharge was included in the rate filing that was in effect at the time of the exam. Regardless, the new rating plan that has been filed and is currently pending approval with the Department does not include this surcharge.

Summary of Department's Evaluation of Insurer Response: Mercury has not corrected past harm that resulted from this violation. As noted above, the Department's records show that the

manual pages containing this 15% surcharge were not filed or approved. Therefore this is an unresolved issue that may result in administrative action.

6. The examination revealed the following deficiencies with respect to Mercury Insurance Group's Notices of Non-renewal and Cancellation:
 - a. 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 practice is contradictory to current code, and is a repeat criticism from the 1998 examination.
CIC § 791.10(e)
 - b. It was noted that Mercury's Notices of Non-renewal and Cancellation include the statement, "Good drivers not eligible for a Good Driver Discount policy solely because of another driver's ineligibility may resubmit with such other driver excluded;" the Companies do not offer a California Good Driver the option to exclude the unacceptable driver in order to continue coverage as written, and thus are cancelling and non-renewing Good Drivers for reasons which do not constitute a substantial increase in hazard insured against as defined by current regulation. Similar criticisms were raised in the 1998 and 2002 examinations. 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. Requiring the insured to re-apply following exclusion as opposed to allowing continuation of coverage does not fully comply with the terms of the 2006 order.
CIC §§ 1861.02(b)(1) and 1861.03(c)(1); CCR §§ 2632.12(b) and 2632.19(f)
 - c. The U-63 memo provided to producers upon an adverse underwriting decision often includes incorrect or misleading wording such as: "Do not resubmit without Company approval," "All Good Drivers may be resubmitted," "Do not submit until Good Driver," and, similar to the C-coding practice prohibited by the June 2, 2006 Stipulation and Order by the Department, "Do not increase our exposure in any way." These statements set pre-conditions that are more restrictive than the "take all comers" provision set forth in current code, and may reduce the likelihood of an individual re-applying for a policy when he or she becomes eligible to do so. Additionally, the practice of limiting an insured's coverage options, and their ability to make policy changes, is considered unfairly discriminatory and may lead to the dissimilar treatment of similar risks. This is a repeat criticism from the 1998 examination. A similar criticism was raised in the 2002 examination, but of practices noted in the Homeowners line of business, and was included in the enforcement action taken following this exam, and the order that resulted.
CIC §§ 1861.02(b)(1) and 1861.05(a)

Summary of Insurer Response: Mercury acknowledged the criticism in item a. above, and indicated that additional instruction has been provided to underwriters, via a bulletin issued on

June 29, 2009, to ensure compliance with California law. Where the pre-programmed reasons do not accurately represent the reason for the adverse action, the underwriter has been instructed to manually insert the reason. The verbiage on the notice which instructs insureds to contact the Companies for the specific reason for termination will be removed when the rate and class plan filing currently pending with the Department is approved and implemented.

Regarding item b., Mercury states that good drivers are required to be offered a Good Driver Discount policy, and that its current practice complies with this requirement.

Regarding item c., Mercury states that the underwriters have been instructed as of January 21, 2010 that no restrictions will be made to the agents in terms of the ability to resubmit or make policy changes in the event that an adverse underwriting decision has been made.

Summary of Department's Evaluation of Insurer Response: With respect to item b. above, Mercury has not proposed any change to address the requirements outlined in CIC § 1861.03(c)(1) and CCR §§ 2632.12(b) and 2632.19(f). In addition, Mercury has not provided a date by which it will make the changes needed to correct the problem identified in item a. Therefore, these are unresolved issues that may result in administrative action.

7. The following Mercury Insurance Group rules and eligibility guidelines with respect to optional coverages and limits are not in compliance with California law with respect to statutory Good Drivers:
 - a. The rule found on page 19 of the Agent's Manual under "Combination of Coverages" 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.
CCR § 2632.14(a)(2)
 - b. Per Mercury's underwriting rules, individuals insured under both a private passenger auto policy and a commercial auto policy through Mercury must have similar limits of liability on both policies. And, if provided by the commercial auto policy, the Uninsured Motorist Bodily Injury limits of both policies must match. This rule is contradictory to the provisions of current regulation with respect to California Good Drivers, and restricts the Good Driver's ability to select the limits he or she desires.
CCR §§ 2632.14(a)(1) and 2632.14(a)(3)

Summary of Insurer Response: Mercury stated that it is only required to offer to Good Drivers the same terms and conditions, and the same options and services that it offers to the general public, not preferential or different terms and conditions.

Summary of Department's Evaluation of Insurer Response: Mercury has not agreed to make changes to its procedures to ensure compliance with the cited regulation, therefore these items remain unresolved and may result in administrative action.

8. 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.
CIC § 11580.07; CCR § 2632.14(a)(2)

Summary of Insurer Response: The Companies maintain that this Program rule complies with California law, as the policy terms and conditions offered to Good Drivers are consistent with those offered to the general public. Since the policy review, however, the Fifteen Plus Program has been replaced with a program to cover vehicles built prior to 1975 (current ISO rating symbols are used for 1975 and newer vehicles). This program does not require that the insured carry comprehensive and collision coverages on the vehicle, but if desired, it still requires that the coverages be purchased together.

Summary of Department's Evaluation of Insurer Response: Though Mercury has eliminated the Fifteen Plus Program, the replacement Program remains deficient with respect to the cited code and regulation. Therefore this is an unresolved issue that may result in administrative action.

9. 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. These guidelines, however, 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.
CIC §§ 1861.02(b)(1), 1861.025, 1861.05(a), 11628.5 and 11628.7;
CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: The Companies stated that the manual, guidelines and application will be clarified to make the sole requirement valid licensing with the implementation of the upcoming rate change that is pending approval by the Department.

Summary of Department's Evaluation of Insurer Response: Mercury's response does not clearly indicate that these risks will no longer be required to be submitted non-bound. Further, Mercury has not provided a date by which it will make the changes needed to correct the problem. Therefore, this is an unresolved issue that may result in administrative action.

10. The following eligibility guidelines are not in compliance with California law:

- a. Non-good drivers who have uncleared “Failures to Appear” for chargeable citations are considered to be ineligible for coverage under a Mercury Insurance Group policy. As the failure to appear in court does not bear a substantial relationship to an insured’s loss exposure, this rule is in violation of current regulation. A similar criticism was made in the 2002 examination. At that time 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.
CCR §§ 2360.0(b) and 2360.2
- b. The Companies 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, and thus cannot be used in the determination of eligibility. Finally, the Artisan rule may also preclude someone who meets the statutory Good Driver definition from being able to purchase coverage.
CIC §§ 1861.05(a), 1861.02(b)(1), 1861.025 and 11628(c)(1); CCR §§ 2360.0(b) and 2360.2
- c. Risks in which more than one household resident has a major conviction are considered to be ineligible for coverage, unless all convictions are greater than five years old. However, the characteristics of a third party household resident do not bear a substantial relationship to the insured’s loss exposure. Therefore, the use of such for the determination of driver eligibility is contradictory to California law, and creates the potential for the unfair treatment of similar risks.
CIC § 1861.05(a); CCR §§ 2360.0(b), 2360.2, and 2632.5(c)(1)(A)

Summary of Insurer Response: Regarding item a. above, Mercury states that according to the Department of Motor Vehicles, the number of Failures to Appear on a driver’s record is equivalent to violation point counts for the purpose of predicting the likelihood of future accidents. Regarding item b. Mercury agreed to remove this restriction from the underwriting manual with the implementation of the rate and class plan filing that is currently pending with the Department. Lastly, regarding item c., Mercury has agreed to modify this requirement so that only major citations for the listed operators will be used for eligibility purposes. This change will also be part of the implementation of the rate and class plan filing that is currently pending with the Department.

Summary of Department's Evaluation of Insurer Response: Mercury has not agreed to discontinue using Failures to Appear for eligibility purposes. In addition, Mercury has not provided a date by which it will make the changes needed to correct the problems identified in items b. and c. Therefore, these are unresolved issues that may result in administrative action.

11. The following practices were noted during the policy review, though are not prescribed in the Companies' rules or guidelines:
 - a. The policy review revealed that 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 Companies' Agent's and Underwriting Manuals, and there is no rule or guideline as to when and on whom such a search should be made.
 - b. The examination disclosed that the Companies request marriage certificates for couples whose last names differ from one another, though this requirement is not prescribed in the guidelines.

Increasing the extent to which an insured is underwritten by conducting additional searches and making additional requests 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.

CIC § 1861.05(a)

Summary of Insurer Response: Regarding item a., the Companies have now established criteria for when Person Searches will be ordered, specifically when the insured will be contacted to verify usage due to excess vehicles identified, in the case of fleet risks with more than one additional vehicle in excess of the number of reported drivers, and when a permissive user loss has occurred. Regarding item b., the practice of requesting marriage certificates for couples with differing last names was discontinued effective January, 2007. Agents were notified of the change by bulletin in January 2007.

Summary of Department's Evaluation of Insurer's Responses: Regarding item a., it is unclear how the procedure explained for "fleet" policies will be applied to personal auto risks. In addition, it is not clear from the response provided that Mercury will have controls in place to ensure that policies will not be up-rated, cancelled, or non-renewed as a result of the People Search or the resulting contact to the insured in a manner that is unfair or non-compliant with the law. Therefore this is an unresolved issue that may result in administrative action.

California Automobile Assigned Risk Plan

12. The CAARP Plan of Operations mandates that renewal questionnaires sent to the insured and producer of record requesting information pertinent to the issuance of a renewal policy include a statement, both in English and Spanish, advising the insured that failure to provide the requested information within the timeframe provided may result in additional charges,

cancellation, or non-renewal of the Plan policy. The renewal questionnaire sent to insureds by CAIC, however, does not include such a statement in Spanish.

CAARP Plan of Operations § 37.6

Summary of Insurer Response: Beginning October 1, 2007, CAIC has provided a notice to insureds which includes the required wording in Spanish.

13. The CAARP offers a named non-owner policy to individuals who do not own an automobile. Per the CAARP Plan of Operations, a non-owner financial responsibility (FR) rate, as opposed to the standard non-owner rate, is applied to risks required to file evidence of financial responsibility, risks not required to file evidence of financial responsibility but are furnished with an automobile for his/her regular use, and risks afforded the use of a vehicle owned by a member of the household provided there is no liability insurance afforded to such individual on a direct primary basis. During the course of the policy review, it was noted that if CAIC discovers that there are vehicles in the insured's household, the FR rate is applied without further investigation. Applying the FR rate without first gathering the information necessary to determine if it is correct for the risk may be considered unfairly discriminatory as it may lead to the dissimilar treatment of similar risks, and may result in excessive rates.

CIC § 11624(e)

Summary of Insurer Response: CAIC stated that, going forward, it will issue policies at the non-FR rate and memo to have the insured provide a policy declarations for each vehicle in the household showing that the insured is listed as a driver. If the insured is unable to provide this proof, it will charge the FR rate. This new process went into effect October 1, 2007. Mercury corrected the rating on the example identified in the policy review, and was not able to identify any additional instances in which the insured had been incorrectly charged the FR rate.

14. In instances where an applicant's motor vehicle report discloses an accident that the CLUE report does not reflect, it is Mercury's practice to send a written request to the applicant for further details regarding the incident before applying a surcharge. If no response is received, CAIC applies two violation points, charging the insured for an accident involving bodily injury (BI). The CAARP Manual discusses assignable penalty points, but does not indicate that a bodily injury accident may be assumed if an applicant fails to respond to an accident inquiry. Additionally, charging for a BI accident without first gathering the information necessary to determine whether the incident in fact involved bodily injury may be considered unfairly discriminatory as it may lead to the dissimilar treatment of similar risks, and may result in excessive rates.

CIC § 11624(e); CAARP Plan of Operations § 24.F.1

Summary of Insurer Response: CAIC stated that the cited CAARP rule section is silent on whether to assign one or two points, and thus it would seem its current procedure is not in violation. CAIC further stated that it is obviously left up to the participating company to decide. However, Mercury stated that it is willing to amend its procedures going forward. If the applicant's motor vehicle report discloses an accident that the CLUE report does not reflect, CAIC will send an inquiry to the insured to obtain additional information. If the insured fails to

respond to the inquiry, a notice of cancellation will be issued; a surcharge will no longer be added.

California Low Cost Automobile Insurance Program

15. Per the CLCAIP Manual, in order to qualify for the California Low Cost Automobile Insurance Program, a driver must not have had any at-fault accidents involving bodily injury or death in the past three years. If it is determined that a risk is not eligible for the Program within 20 days, the application and premium deposit shall be returned to the producer and coverage is deemed to be void from inception. Upon assignment, CAIC orders motor vehicle records (MVRs) and CLUE reports to verify eligibility for the Program. If an accident appears on a driver's MVR, but not on the CLUE report, CAIC issues the policy, then sends a request to the insured to provide additional information regarding the accident to determine whether or not the incident involved bodily injury. If the insured fails to respond to the inquiry, or responds adversely outside of the 20-day period allotted to determine eligibility, CAIC sends a Notice of Cancellation of the policy. Per current Code, as well as the Program Manual, a policy may only be cancelled if the policy was obtained through fraud or material misrepresentation, the insured fails to pay any premiums, or other insurance is obtained through the voluntary market. The insurer's failure to determine eligibility within the 20-day period allotted does not constitute grounds for cancellation.

CIC § 11629.77(a); CLCAIP Manual § 33.B.1

Summary of Insurer Response: Effective immediately, CAIC will discontinue cancelling policies if eligibility is not established within 20 days.

Homeowners

16. The policy review revealed an inconsistency in obtaining evidence of prior insurance. MCC's eligibility guidelines state that evidence of prior insurance must be submitted with the application, however eight out of 53 (15%) new policies were written without evidence of prior insurance. Failure to adhere to the established underwriting guidelines creates the potential for unfair discrimination.

CIC § 1861.05(a)

Summary of Insurer Response: MCC responded that it does not follow this eligibility requirement and will remove this guideline. A bulletin will be sent to all agents advising them of this change by February 22, 2010.

17. The underwriting manual indicates that agents must call MCC for approval before binding homeowners policies with Coverage A limits in excess of \$1,000,000. However, there are no guidelines in place that indicate the criteria considered by underwriting when determining whether such policies should be approved. During the policy review, there were two instances in which homeowners policies were written in excess of the \$1,000,000 maximum Coverage A limit, however the files do not contain documentation reflecting the criteria considered by

underwriting in deciding to approve the risks. The lack of specific guidelines is considered to be in violation of current regulation, and creates the potential for unfair discrimination. Additionally, the lack of supporting documentation is in violation of current Code. CIC §§ 1857 and 1861.05(a); CCR §§ 2360.0(b), 2360.2, and 2360.6

Summary of Insurer Response: MCC stated that \$1,000,000 is the binding limit for producers. The established new business eligibility guidelines also are to be applied by underwriting when submissions are made in these cases. No additional criteria are used to determine eligibility. A bulletin has been issued to all homeowners underwriters reminding them of this process for homes with limits in excess of \$1,000,000.

18. The policy review found that MCC's Eligibility and Binding Rules do not include specific guidelines regarding new business risks with loss experience, nor are there guidelines in place for renewing policies with losses. Currently, the guidelines state to call for underwriting approval before binding risks with two or more closed claims in the past three years, or risks that have experienced a liability loss in the past three years, but they do not provide the criteria considered by underwriting, which must be specifically related to the insured's loss exposure, when determining whether such policies should be approved. Failure to implement guidelines which can be consistently applied upon evaluation of such risks may lead to the dissimilar treatment of similar risks.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: Mercury stated that one liability loss or more than one non-liability loss which indicates an increased possibility of future losses is unacceptable. Increased probability of loss occurs when there is more than one loss from the same cause of loss which indicates that the property is not adequately maintained or repaired. Increased probability of loss also occurs when there are single or multiple hazards that have not been remediated by the insured. On or about May 2009, MCC included the following wording in its manual: "Please call underwriting with details when the risk has more than one loss; or single or multiple unremediated hazards." As of January 21, 2010, a memo was also issued to all homeowners underwriters that outlines the manner in which accounts with loss history are to be evaluated.

19. There is ambiguity in MCC's Ineligible Risks guideline which states, "Risks with a combination of objective, non-discriminatory adverse underwriting factors that relate to the risk of loss." This guideline does not provide an explicit list of characteristics considered upon request for underwriting approval. The failure to maintain eligibility guidelines that are specific, objective, and substantially related to an insured's loss exposure is in contravention of current regulation, and may result in the dissimilar treatment of similar risks.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: Mercury stated that it will remove this guideline. A bulletin communicating this change will be sent to all agents by February 22, 2010.

20. Risks with trampolines are ineligible unless the application is for a HO3 policy and is accompanied by a signed P57 endorsement, which excludes coverage for liability associated with the trampoline. The Trampoline Liability Exclusion form includes a statement that it applies to the policy, or any continuation, renewal, or replacement of the policy by the insured, or the reinstatement within 30 days of any lapse thereof. The policy review found that this endorsement is sent at each renewal, requiring the insured's signature, and contains a notice which states that the failure to respond within 30 days may result in cancellation or non-renewal of the insurance policy. Since the initial signed exclusion applies continuously unless the policy lapses for more than 30 days, this procedure may be considered unfair or misleading as the insured is not required, under the language of the endorsement, to re-sign the endorsement at each renewal, and the policy is not actually subject to cancellation or non-renewal for the failure to do so. In addition, the failure to return the P57 endorsement to MCC within 30 days does not establish valid grounds for cancellation, nor non-renewal.

CIC § 790.06

Summary of Insurer Response: MCC responded that the process of annually requesting a signature was a system coding error, and that the endorsement forms are no longer sent with each renewal. Additionally, the use of the language regarding returning the form within 30 days to avoid cancellation is an error. The system was corrected to remove this language.

21. MCC's May 12, 2002 rate filing includes a rating variable for dog ownership. The filing indicates that a rating factor of 1.10 applies if the insured owns a dog or dogs, while a factor of 1.00 applies if no dog is owned. MCC's standard homeowners premium includes coverage for dog bite liability, and the rating variable accounts for the increased exposure to loss due to this peril for an insured who owns a dog. The policy review showed that contrary to the filing, MCC applies the 1.10 factor to every policy, regardless of whether a dog is owned, unless the insured signs a Dog Liability Exclusion coverage endorsement. This fails to comply with the filed and approved rating plan, and may also result in the application of excessive rates for individuals who do not own dogs.

Although the application asks if the insured wishes to sign the Dog Liability Exclusion, it cannot be determined what explanation is given to the insured regarding how this exclusion affects coverage, or how the failure to sign the exclusion affects the premium. This may result in further dissimilar treatment of similar risks, and may result in MCC's failure to communicate to policyholders all facts within its knowledge which are material to the contract, and may be determined to be an unfair practice.

Finally, the Dog Liability Exclusion form that MCC was using included a statement that it applies to the policy, or any continuation, renewal, or replacement of the policy by the insured, or the reinstatement within 30 days of any lapse thereof. However, the policy review found that this endorsement was being sent at each renewal, requiring the insured's signature. This procedure may be considered unfair or misleading as the insured is not required, under the terms of the endorsement, to re-sign the endorsement at each renewal. Further, MCC's application of the Dog Ownership Surcharge for failing to return a signed exclusion is in

contravention of current regulation as insurers are ultimately responsible for charging an insured the lowest premium for which he or she qualifies, and may result in excessive rates. CIC §§ 332, 790.06, 1861.01(c), and 1861.05(a); CCR §§ 2360.3 and 2360.4

Summary of Insurer Response: MCC stated that whether the premium differential is labeled a surcharge or a discount is a semantic issue, and that the standard premium includes coverage for dog bite claims. The term “surcharge” is a technical term referring to an increased charge over a basic premium level, but to the insured in any given context (that is, dog ownership), it is thought of more readily as a discount in return for the dog exclusion. Regarding the annual request for signature on the exclusion endorsement, MCC advised the Department that this was a coding error, and that the system has been corrected to no longer send the endorsement at each renewal.

Summary of Department's Evaluation of Insurer Response: MCC has not revised its rating procedure to comply with its filing regarding the dog ownership rating variable. Because it continues to utilize the exclusion procedure instead of applying the rating factor as filed, MCC continues to charge potentially excessive rates for insureds who do not own dogs, and continues to fail to communicate to policyholders all facts within its knowledge which are material to the contract. Mercury has not agreed to correct past harm to consumers who were overcharged due to this practice. This is an unresolved issue that may result in administrative action.

22. The following deficiencies were noted with respect to MCC’s application of credits:

- a. The examination revealed that MCC did not apply its rating rules in a consistent manner, misapplying the Premises Alarm Credit and Gated Community Credit. In two instances, MCC failed to apply the Premises Alarm Credit to new risks meeting the definition(s) of fire/burglar alarm, whereas in other instances, the credit was applied to new risks not meeting the definition(s). This credit was also noted on six renewals, when the risks were ineligible. Regarding the Gated Community Credit, there were six instances where the credit was applied to condominium and homeowners risks without supporting documents, as required by the guidelines, and multiple instances where the credit for homeowners risks is only supported by a photo or inspection report that does not specifically confirm that the surrounding fence is at least six feet tall, or that there is a uniformed guard on duty at all times. The inconsistent application of the filed rating plan may be considered unfairly discriminatory as it may result in the dissimilar treatment of similar risks. A similar criticism was made in the 2002 examination. Further, in response to that examination report, MCC stated that it intended to remove the Gated Community Credit for condominium risks through a filing submitted on February 1, 2003, but the filing was later withdrawn due to other issues. The discount was never removed, but it has not been applied to all eligible risks, resulting in the dissimilar treatment of similar risks.

CIC §§ 1857 and 1861.05(a); CCR § 2360.6

- b. The policy review revealed that an insured can renew their policy with up to a 30 day lapse, or rewrite a policy within 30 days of cancellation, and still retain the Renewal Credit, however the current guidelines do not reflect this practice. The failure to adopt and implement guidelines that can be applied in a consistent manner creates the potential for unfair discrimination.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: With respect to item a., MCC advised that the Premises Alarm issue is a training issue, and provided the Department with a copy of the Alarm Coding Reminder, dated October 10, 2007, which refers agents to the Alarm Coding sheet for correct underwriting codes. Regarding the Gated Community credit, MCC stated that there is no longer a six-foot fence requirement for homeowners risks, and the manual was corrected to reflect this effective May 2009. Additionally, the requirement for documentation to support this discount will be reiterated to agents and underwriting staff. For tenant and condominium risks, MCC will submit a filing to remove the Gated Community discount for both new and existing business. This filing will be submitted once the filing that is currently pending with the Department has been approved. To address rating accuracy for in-force policies, all HO-3 policyholders will receive a letter with their next renewal that outlines eligibility for the credits at issue, and will advise the insured to contact Mercury to receive the credit if the home qualifies. Regarding item b., MCC stated that this is consistent with its general practice, and has added this provision to its manual effective May 2009.

Summary of Department's Evaluation of Insurer Response: Mercury has not yet provided a date by which it will make the new filing that will eliminate the gated community credit for HO-4 and HO-6 risks. Therefore, item a. is an unresolved issue that may result in administrative action.

23. MCC's Standard homeowners policy limits tool losses by theft to \$1,000, but provides the option to increase that limit to a maximum of \$2,500, but not to exceed \$1,000 per item. The Superior homeowners policies do not have any special limits of liability or restrictions on tool coverage, unless the insured is employed as an artisan, gardener, installer, or works in a construction trade occupation, in which case MCC sends a P-2 Tool Limitation Endorsement form to the insured limiting coverage for the theft of tools to \$1,000; MCC does not offer insureds in the abovementioned employment classifications the option to increase their tool coverage limit as is offered through the Standard homeowners policy. Because the Superior policy generally provides broader coverage than the Standard policy, the above referenced insureds who want additional tool coverage may be limited to purchasing the Standard policy at a higher premium for the same coverage enhancements. This practice creates potential for the dissimilar treatment of similar risks.

CIC § 1861.05(a)

Summary of Insurer Response: MCC stated that it will add to the Superior policy the option to increase tool coverage limits for the above mentioned occupations to \$2,500 at its next rate filing. MCC has agreed to submit this filing following the approval of the rate filing that is currently pending with the Department.

Summary of Department's Evaluation of Insurer Response: Mercury has not yet provided a date by which it will make the new filing that allow increased tool coverage limits to be purchased with the Superior policy. Therefore, this is an unresolved issue that may result in administrative action.

24. If requested, Mercury writes Homeowner and Umbrella coverages as a package. The policy review revealed three instances in which the entire policy package was non-renewed for failure to meet the umbrella underwriting requirements, despite the fact that the insured's eligibility for a homeowners policy remained unchanged. In these instances, stand-alone homeowners policies were not offered. The non-renewal of a homeowners policy, as well as the insured's inability to purchase a stand-alone homeowners policy, must be based on reasons which are substantially related to the insured's homeowners loss exposure, as provided by CCR Section 2360.0(b). The non-renewal of a policy despite the insured's eligibility is considered unfairly discriminatory, and further, as it is MCC's expressed procedure to write stand-alone policies in these instances, the failure to have controls in place to ensure that this procedure is followed creates the potential for unfair discrimination.

CIC § 1861.05(a)

Summary of Insurer Response: MCC advised the Department that there is nothing to preclude a producer from re-writing a stand-alone homeowners policy, and, as it is standard procedure, an instruction reminding agents to do so has been added to the agent's memo. The Underwriting Manual was also updated in MCC's May 2009 filing.

25. The examination disclosed that MCC's notices of non-renewal and cancellation do not state the specific reason for termination. Failure to provide a specific reason for non-renewal and cancellation is in violation of current code. This criticism was noted in the Private Passenger Automobile and Commercial Multiple Peril portions of the 1998 examination.

CIC § 791.10(e)

Summary of Insurer Response: Mercury responded that the notices noted during the review were processed before its system had the ability to add a specific reason, but that it is now able to do this. This change took effect February 14, 2007. Further, additional instruction has been provided to underwriting staff to ensure compliance with the cited code.

26. The homeowners policy's replacement cost agreement includes acceptance of MCC's yearly adjustment of Coverage A, and therefore it is MCC's procedure to apply the inflation/MSB factor annually at renewal. The policy review found that, in some cases, when the inflation/MSB factor is applied, the new limit is rounded up to the nearest thousand. However, there were other instances noted when limits were not rounded. Inconsistency in the application of the inflation/MSB factor is considered unfairly discriminatory as it may lead to the dissimilar treatment of similar risks.

CIC § 1861.05(a)

Summary of Insurer Response: Mercury explained that upon application of the inflation/MSB factor to the Coverage A limit, in instances where the Coverage B, C, and D limits are at the exact percentage of the prior Coverage A limit as included in the policy, the dwelling limit gets rounded up to the next thousand. In instances where the Coverage B, C, and D limits are above the included percentages of the prior Coverage A limit, the new MSB value is not rounded. Mercury stated that its system will be reprogrammed to always round the Coverage A amount up to the next nearest \$1,000 upon application of the inflation/MSB factor at renewal.

Summary of Department's Evaluation of Insurer Response: The examples provided by MCC to show how the rounding process was being applied indicate that in cases in which the original limits for Coverages B, C, and D were above the exact percentages of Coverage A as included in the policy, the original increases to those limit percentages are not preserved when the inflation factor is applied to the Coverage A limit, and in fact, the limits for those coverages are reduced at renewal. MCC has failed to propose a resolution to these issues; they remain unresolved and may result in administrative action.

27. MCC implemented its most recent Homeowners rate change on December 15, 2002. Subsequent filings made between 2003 and 2007 were for forms and rules only. Per current regulation, the Commissioner may require an insurer transacting homeowners business with a rate approved three years ago or longer to file a rate application as a means to determine whether a rate previously approved remains in compliance with the statutory standard set forth to ensure that rates are not inadequate, excessive, or unfairly discriminatory.
CIC § 1861.05(a); CCR § 2644.50

Summary of Insurer Response: MCC stated that rate filing number 08-9086 was filed and approved by the Department on July 17, 2008 to be implemented on August 15, 2008. MCC further stated that an additional filing was made in May 2009, and thus it is in compliance with the cited California laws.

Commercial Automobile

28. MCC's manual states, "If the combined loss ratio for the past two or three years exceeds 65%, please contact the Underwriting Department before quoting or binding," however there are no guidelines in place which delineate the criteria considered by underwriting when assessing a risk. Current code requires insurers to adopt eligibility guidelines which are specific, objective, and substantially related to the insured's loss exposure; the failure to do so creates the potential for unfair discrimination.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: Mercury stated that it believes it has been consistent and objective in the decisions underwriters have made regarding risks of this type. To address the Department's concern, Mercury stated that it will revise its manual to be more specific regarding how risks with loss ratios exceeding 65% are to be evaluated. Mercury will continue

to require documentation in the underwriting file to support the decisions made. Mercury stated that it intends to have the amended manual in place by March 15, 2010.

29. MCC's Binding Requirements instruct agents to contact underwriting for approval with respect to risks that have been in business for less than two years, as well as for certain risks requesting a \$1,000,000 combined single liability limit, but do not indicate the criteria considered by the Underwriting Department when assessing eligibility. Current code requires insurers to adopt eligibility guidelines which are specific, objective, and substantially related to the insured's loss exposure; the failure to do so creates the potential for unfair discrimination.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: MCC stated that it removed this guideline effective August 19, 2008.

30. MCC's manual contains a rule which states, "The company may require the insured to lower the Bodily Injury and Property Damage Liability limits for certain drivers due to age, driving record or a combination of both when there are four or more vehicles on the policy. On risks that have less than four vehicles, we may require the limits to be reduced on all vehicles on the policy." However, this rule does not clearly define when the Reduction in Limits endorsement is imposed on insureds, or what characteristics a risk must actually exhibit for the endorsement to be required.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: Mercury stated that the Reduction in Limits endorsement is no longer imposed on insureds at new business, and that a bulletin was sent to agents on August 19, 2008 informing them of this change. The underwriting manual was updated to reflect this change and was filed with the Department. The amended manual was implemented effective September 1, 2009. In addition, Mercury stated that it has confirmed that there are no in-force policies with this endorsement attached.

31. The policy review revealed that, if an agent requests to be removed from a risk, the policy will be non-renewed with a termination reason of, "Per agent's request due to insured's very difficult to work with." However, an agent's desire to be removed from a risk has no bearing on the insured's loss exposure, and thus cannot solely qualify a risk as ineligible.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: Mercury agreed to modify its procedure in these situations, indicating that it will contact the insured directly, explain the issue, and offer assistance in moving the insured to a different Mercury agent. An internal bulletin was issued to underwriting staff on August 19, 2008 outlining this procedural change.

32. The review found that Mercury non-renews risks which exceed the maximum tank trailer capacity, however the underwriting manual does not specify a maximum tank trailer capacity.

The failure to adopt and implement eligibility guidelines which can be applied in a consistent manner is in contravention of current regulation, and may lead to the dissimilar treatment of similar risks.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: MCC stated that an internal bulletin was sent to agents and underwriting staff on August 19, 2008 that specified maximum eligible tank trailer capacity. Mercury also amended and filed the underwriting manual to reflect this change. The amended manual was effective as of September 1, 2009.

33. MCC's fleet rating rules indicate that the class (service, retail, commercial) is to be the same for all vehicles on a policy. The policy review revealed, however, that not all vehicles are rated in the same class, though there is no rule in the manual which allows for exceptions. Failure to adhere to MCC's rating rules may result in the dissimilar treatment of similar risks.

CIC § 1861.05(a)

Summary of Insurer Response: MCC stated that it was never its intention to rate all vehicles on each policy using the same class, and that the wording in the manual may have caused confusion and misunderstanding. Mercury has revised the wording in the manual, which has been filed as of September 1, 2009, to clarify that each vehicle will be classified according to usage and size.

34. For renewal policies, the earned premium as of the date the policy renewal is processed is used in determining the experience rating credit. During the policy review, it was noted that the insured's payment plan had an impact on the earned premium used. For example, if an insured selected a one-payment plan and the premium was paid in full, the entire term premium would be used in the experience rating calculation, even though renewals process 60 days prior to the effective date of the renewal policy. If that same insured selected a ten-payment plan, only the premium paid to date on the current policy would be used in the calculation. This discrepancy could lead to a lower loss ratio for an insured that pays in full, resulting in a higher experience rating credit. This inconsistent method of determining the earned premium used in calculating experience rating credits may lead to the dissimilar treatment of risks with similar loss experience.

CIC Section 1861.05(a)

Summary of Insurer Response: MCC responded that, at the time a renewal is processed, the renewal underwriter calculates the experience credit on policies paid in-full based on losses for the period ending 60 days prior to policy expiration and for premiums for the period ending on the renewal date. For policies on a payment plan with monies still due, the same number of months for premiums and losses were used in the calculation. To address this concern, MCC is amending its procedures to include in the experience period the same number of months and premiums in the calculations for all payment plans to ensure that risks paid in-full do not receive an artificially low loss ratio, and that all risks are treated in a consistent manner. An internal bulletin was issued on February 27, 2009 to implement this procedure.

35. The policy review revealed that MCC did not have a rule in place regarding the selection of a rating band for a zip code not yet included in the automated rating system because it was newly added or created. The failure to have a rule which addresses the addition of new zip codes with respect to the rating band factors used may result in the dissimilar treatment of similar risks.

CIC § 1861.05(a)

Summary of Insurer Response: Mercury stated that it has updated its underwriting rules to address this situation. A rule has been added that instructs agents who are unable to obtain a quote due to a zip code not in the system will refer to underwriting. Mercury's Actuarial Department will look at the physical location, identify the zip code it has been split from, and determine whether to assign the rating band for zip code from which it was split or to assign the rating band for a neighboring zip code. Record will be kept of the assignments, and the rating band definitions updated at the time of MCC's next rate filing. Mercury has communicated this process to all agents.

Summary of Department's Evaluation of Insurer's Response: MCC has not yet indicated that it will include this methodology in its rate filing. Therefore this is an unresolved issue that may result in administrative action.

36. Based on the filing applicable at the time of the exam, as well as the current filing with the Department, MCC's Multi-Policy Discount is to be "applied entirely to the commercial auto policy premium." However, the policy review revealed that the discount was not applied to the towing and labor and rental car coverage premiums. Failure to adhere to the filed rating plan is in violation of current code, and creates the potential for the dissimilar treatment of similar risks.

CIC §§ 1861.01(c) and 1861.05(a)

Summary of Insurer Response: MCC confirmed that its system was programmed to exclude towing and labor and rental car reimbursement coverage premiums upon application of the multi-policy discount, explaining that it was never the intent to apply this discount to these coverages. As of September 1, 2009, MCC has clarified the Coverage section of the manual to reflect MCC's intent. MCC will also correct the Discount section of the manual and will file this change with the Department by March 15, 2010.

Commercial Multiple-Peril

37. With respect to MCC's general underwriting rules and guidelines, the following deficiencies were noted:

- a. MCC's manual contains a guideline which states that any applicant with a bankruptcy in the past five years is not eligible, and any applicant with a lien of more

than \$1,000 may not be eligible, instructing the agent/broker to call the commercial property department for approval before submitting the application. The application, however, does not contain any questions pertaining to bankruptcies or liens. Additionally, the manual does not list the criteria considered by underwriting once contacted regarding applicants with liens. The failure to maintain eligibility guidelines that are specific and objective, and that can be applied in a consistent manner is in contravention of current regulation, and may lead to unfair discrimination. Additionally, the failure to include material underwriting questions on the application creates the potential for similar risks to be treated dissimilarly.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

- b. The manual contains a guideline which refers agents/brokers to the underwriting department for approval with respect to risks with a loss exceeding \$7,500, but does not specify what is considered by underwriting in determining eligibility. The failure to maintain specific and objective eligibility guidelines that can be applied in a consistent manner is in violation of current regulation, and creates the potential for unfair discrimination.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

- c. There is ambiguity in the ineligibility guideline which states, "Risks with a combination of objective, non-discriminatory adverse underwriting factors that relate to the risk of loss." This guideline does not provide an explicit list of characteristics considered upon request for underwriting approval. The failure to adopt eligibility guidelines that are specific and objective, and that can be applied in a consistent manner is in violation of current regulation, and allows for unfair discrimination.

CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: MCC responded, with respect to item a., that the guideline will be removed from the underwriting manual. Regarding item b., MCC stated that it will update its underwriting manual to delineate the criteria considered by underwriting upon submission, which includes frequency and severity of the loss and the steps taken to prevent any future losses, the loss ratio in combination with the size of the risk, and the condition and maintenance of the property. With respect to item c., MCC stated that it will remove the guideline from its underwriting manual. All underwriting manual changes were made by January 1, 2010. An agent's bulletin will be issued by February 28, 2010 advising them of the changes.

- 38. MCC's General Underwriting Rules indicate that a Dun & Bradstreet (D & B) Financial Report is required for each risk, but the policy review revealed that not all files contained a D & B report. Failure to adhere to the underwriting guidelines may lead to the dissimilar treatment of similar risks.

CIC § 1861.05(a)

Summary of Insurer Response: MCC stated that if a report is unavailable for any given risk, it previously relied on the word of the insured that there are no liens or bankruptcies. To ensure future consistency in the treatment of similar risks, MCC agreed to discontinue this process and remove this guideline from its manual. The underwriting manual was updated to reflect this

change as of January 1, 2010, and information on the revision will be included in the agent's bulletin to be issued by February 28, 2010.

39. The manual section pertaining to MCC's Offices Program contains a guideline which states "Offices Not Otherwise Classified Above – Refer to Company," however there is no indication of what is considered by underwriting upon referral. Failure to adopt eligibility guidelines that are specific and objective, and that can be applied consistently to all applicants is in violation of current regulation, and allows for the dissimilar treatment of similar risks.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: MCC responded that if it receives a risk that is not specifically acceptable per its guidelines and it is not familiar with the operation, or it is not considered a "lower exposure risk," typically it will be declined. It has now developed underwriting guidelines which have been added to its manual. Information on the revised guidelines will be included in the agent's bulletin to be issued by February 28, 2010.

40. Multiple risks were declined for various reasons which were not supported by MCC's Lessor's Risk Program ineligibility guidelines. In one instance, a restaurant applicant was declined due to a high percentage of problematic tenants, but the eligibility guidelines are vague regarding restaurants in a multi-tenant risk and fail to provide the point at which a risk is no longer eligible. In another instance, an applicant was declined due to lack of an approved rating schedule for subterranean parking, however underground parking ineligibility only pertains to office buildings over three stories. Additionally, an applicant was declined due to the storage of kiddie ride equipment and an auto repair shop being difficult tenants, but there are no ineligibility guidelines to support that decision. The failure to adopt eligibility guidelines that can be applied in a consistent manner is in contravention of current regulation, and may lead to the dissimilar treatment of similar risks.
CIC § 1861.05(a); CCR §§ 2360.0(b) and 2360.2

Summary of Insurer Response: MCC stated that it has amended its underwriting manual to include detailed eligibility guidelines which more clearly define what is eligible and what is ineligible for the Lessor's Risk Program. This was completed September 19, 2007.

41. With respect to the Apartment Program, MCC does not have a rule in its manual indicating that buildings used for storage, recreation, and laundry are to be rated using the 1-4 unit rate, though it stated that this is its procedure. In one instance, an apartment building was rated using the 3-4 unit rate, however the rate applied to its central storage building was for 5-10 units. Failure to have a rating rule in the manual which can be applied consistently may lead to the dissimilar treatment of similar risks, and may result in excessive rates.
CIC § 1861.05(a)

Summary of Insurer Response: MCC stated that it needs to clarify its manual in this regard by adding an "other structures" section which includes buildings used for storage, laundry,

parking, and recreation. It indicated that the manual will be updated to reflect that the rates to be used for such structures are those used for buildings with 1-4 units, and that the revision will be completed no later than January 1, 2010.

42. The policy review revealed that, when provided, MCC fails to include loss of earnings coverage details on its American Legion Veteran's of Foreign Wars and Other Social Groups Program policy declarations pages. Current code mandates that insurers include risks insured against on its declarations pages.

CIC § 381

Summary of Insurer Response: MCC stated that it now includes this information on the declarations pages for all "American Legion" policies that have loss of earnings coverage. This new process was implemented effective September 19, 2007.

43. MCC's underwriting manual contains a guideline stating that "full insurance to value is required on business personal property and the building" for Businessowners Policies. Regarding apartment risks, the manual states that each "risk must be written at 100% insurance to value." However, the policy review disclosed a lack of supporting documentation to confirm that a proper evaluation was made to determine that these eligibility guidelines were met. The failure to document insurance to value is a violation of the recordkeeping provisions set forth in current code and regulation. Additionally, failure to ensure that all eligibility guidelines are met for each risk may result in the dissimilar treatment of similar risks.

CIC §§ 1857 and 1861.05(a); CCR § 2360.6

Summary of Insurer Response: MCC stated that it orders a Marshall & Swift Report on all new business accounts with building coverage. It is currently 75% complete in the process of conducting a policy review to ensure that all applicable risks have a Marshall & Swift Report. It further stated that all policies include a 6% inflation guard for building coverage and a 4% inflation guard for business personal property.

44. MCC's filed rating plan for its Lessor's Risk Program indicates that risks with values which exceed \$750,000 for a one location policy or \$5,000,000 for a multiple location policy are to be written on a Special Multiple Peril (SMP) coverage form, and that risks with values which fall below the abovementioned thresholds are eligible for the Businessowner Policy (BOP) coverage form. The policy review revealed, however, that several risks were written on the BOP coverage form despite exceeding the values stated above. Failure to adhere to MCC's filed rating plan is in violation of current code. Additionally, as the BOP coverage form offers broader coverage than the SMP coverage form, deviation from MCC's filed rating plan allows for the dissimilar treatment of like risks.

CIC §§ 1861.01(c) and 1861.05(a)

Summary of Insurer Response: MCC stated that an internal decision was made in 2003 to move all SMP Lessor's Risks to BOP coverage forms, which essentially broadened the

insureds' coverage without changing their premiums. This process is in accordance with MCC's now-current guidelines, which have been filed and were implemented effective September 19, 2007.

45. MCC's filed Retail BOP Program rating plan does not include rates for retail risks with an occupancy of Insurance Agents. However, the policy review identified two cases in which such risks were written. Deviation from MCC's filed rating plan is a violation of current code, and may lead to the dissimilar treatment of similar risks.
CIC §§ 1861.01(c) and 1861.05(a)

Summary of Insurer Response: MCC stated that an internal decision was made to allow all Mercury-appointed agencies to be rated in the Retail BOP Program under "not otherwise classified," and has since decided to allow all insurance agencies to be rated in that Program. This class has been filed and was placed in the Retail BOP Program effective September 19, 2007.

46. The policy review revealed that when certain risks do not fit into any of Mercury's Office or BOP Programs, MCC may offer to provide a monoline property quote. This quote is attained by applying the package policy rate, which includes liability coverage, then simply excluding the liability coverage from the policy. In doing so, MCC is essentially charging for coverage that is not provided, which results in excessive premium.
CIC § 1861.05(a)

Summary of Insurer Response: MCC stated that it offers a mono-line commercial fire policy on risks that do not fit into any of the Office or BOP Programs. Three of its BOP Program rates are composite rates; those composite rates are also used as its package rates, which has been the same approach since the Program's inception. MCC stated that it has evaluated the composite rates and has come to the conclusion that the liability portion of the written premium is 10%. Therefore, MCC has agreed to refund 10% of the total written premium dating back to Calendar year 2004, which results in a total refund of \$70,165. These refunds will be processed by February 28, 2010. MCC also stated that it will clarify the rating procedure for these risks in its next rate filing, which it will submit to the Department by March 15, 2010.

47. MCC provides coverage for earthquake sprinkler leakage in its Businessowner Policies, but has not filed the rates used with the Department. Similarly, owner's & contractor's protective liability coverage was provided to a risk, but the Commercial Property manual does not include the flat charge premium of \$88.00 that was used. Additionally, a liquor liability limit of \$1,000,000.00 was provided to a risk written in the American Legion Veteran's of Foreign Wars and Other Social Groups Program, but the maximum liquor liability limit offered in this program is \$500,000. The use of unfiled rates is a violation of current code, and may lead to the dissimilar treatment of risks with similar characteristics. A similar issue was raised in the 1998 examination.
CIC §§ 1861.01(c) and 1861.05(a)

Summary of Insurer Response: Mercury stated that the rates for earthquake sprinkler leakage coverage will be filed with the new manual no later than March 15, 2010, and the increased liquor liability coverage was filed with the Department and went into effect September 19, 2009. Additionally, regarding owners & contractor's protective liability coverage, MCC filed a miscellaneous rate for Property & Liability that went into effect September 19, 2009.

48. With respect to manufacturers and contractors liability for Metalworkers and Woodworkers, MCC's manual states that all policies with a payroll of \$100,000 or more, including policies where the payroll was \$100,000 or more, but has dropped below \$100,000 by 10%, are subject to a voluntary audit. The policy review revealed, however, that no audits have been performed since 2003. Failure to follow Mercury's guideline as outlined in the manual creates the potential for inadequate or excessive rates, and may lead to the dissimilar treatment of similar risks.

CIC § 1861.05 (a)

Summary of Insurer Response: MCC responded that it discontinued voluntary audits in 2003, but the manual had not been updated to reflect this. The manual was updated effective September 19, 2007.

49. For the Lessor's Risk Program, MCC offers a liability credit when the building owner is named as an additional insured on their tenant's liability policy, but there are no procedures in place to ensure that the availability of this credit is communicated to insureds. Current regulation states that insurers are ultimately responsible for determining the lowest premium for which each insured qualifies; the failure to do so may result in excessive rates.

CIC § 1861.05(a); CCR §§ 2360.3 and 2360.4

Summary of Insurer Response: MCC stated that all credits are listed in its underwriting manual, and that information regarding this credit will be added to the cover letter that goes out to insureds both at new business and at renewal. Mercury will be making a rate filing by March 15, 2010; once approved, it will implement the amended cover letter along with the new rates.

50. The policy review revealed that Mercury failed to consistently order and conduct regular inspections in accordance with its established procedure. Failure to adhere to established procedures may lead to the dissimilar treatment of similar risks.

CIC § 1861.05(a)

Summary of Insurer Response: MCC stated that its system was set up to automatically order inspections on suspense dates (future dates selected by underwriting) as part of a conversion to automated files, but it failed to do so. Mercury further stated that it is currently conducting a file review on each file to determine if an inspection was missed, and that it is 75% done with

this process. Additionally, MCC has a manual suspense system in place to ensure that no future inspections, as required per its guidelines, are missed.

51. A review of policies written in MCC's Artisan Program revealed a \$1 charge associated with a \$1,000 property damage liability deductible, however there is no mention of this rate in the manual. Further, the rates in the manual already contemplate a \$1,000 property damage liability deductible. The use of rates which have not been filed and approved by the Department is in violation of current code.

CIC § 1861.01(c)

Summary of Insurer Response: Mercury stated that its Artisan Program had a technical error which disallowed the property damage liability deductible from being properly displayed on the declarations page, and thus it was listed in the "manual premium" field. When this field is used, a \$1 premium charge is applied. MCC stated that this error has been corrected as of September 19, 2007 to allow the deductible to appear on the declarations page with no additional charge. As of January 1, 2010, MCC began applying a credit at renewal to all policies that had been overcharged due to this error and expects to have the process of processing all refunds completed by December 31, 2010.

Summary of Department's Evaluation of Insurer's Response: Mercury has not established a schedule for reporting the credit amounts to the Department. Therefore, this is an unresolved issue that may result in administrative action.

52. MCC failed to consistently provide the California Residential Property Disclosure for apartment risks with four or less units as required by current code. This is a repeat criticism from the 1998 examination.

CIC §§ 10101 and 10102

Summary of Insurer Response: MCC stated that previously the disclosure was not included with these policies, but is now included with all new business and renewal policies for residential buildings which are four or fewer units. This process was implemented on September 17, 2007.

53. MCC failed to consistently provide 30 day legal notice for cancellation as required by current code. This criticism was made in the Commercial Automobile portion of the 2002 examination and was included in the enforcement action taken following that exam, and the order that resulted.

CIC § 677.2(c)

Summary of Insurer Response: Mercury stated that some cancellations that were processed by underwriting to allow the required 30 days notice were not processed by the system until the following day, allowing only 29 days notice. Because of this, MCC's procedure has changed to allow for a minimum of 31 days in the event that its system does not process the cancellation

on the same day, taking into consideration weekends and holidays. This procedure took effect in September 2007.

54. The review revealed that MCC's manual is inconsistent with its forms regarding coinsurance, as well as with what is indicated to insureds on their declarations pages. A Businessowner Policy provision on form BP 00 02 indicates that an 80% coinsurance clause exists, but in the manual, the rates reflect a 90%-100% coinsurance clause. Also, declarations pages for policies reviewed indicated coinsurance as "N/A." The presence of rates in the manual which contemplate a 90%-100% coinsurance clause may allow for inadequate rates. In addition, the policy declarations page provides incorrect information to the insured regarding coverage terms.

CIC § 1861.05(a)

Summary of Insurer Response: MCC indicated that the coinsurance clause is applied as outlined in form BP 00 02, and that its rates are consistent in that regard. Additionally, to avoid confusion, "Coinsurance" was removed from Mercury's BOP declarations pages effective September 17, 2007. Mercury further explained that the inclusion of information in the manual regarding the 90% to 100% coinsurance clause appears to have been due to a clerical error. The manual was amended in June of 2009 to remove this reference.

EXHIBIT D

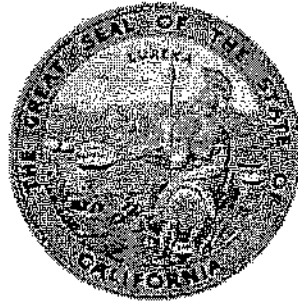
REPORT OF MARKET CONDUCT EXAMINATION OF THE

RATING AND UNDERWRITING PRACTICES OF THE

MERCURY INSURANCE GROUP
(NAIC #0660)

AS OF AUGUST 31, 2002

STATE OF CALIFORNIA



DEPARTMENT OF INSURANCE

FIELD RATING AND UNDERWRITING BUREAU

MARKET CONDUCT DIVISION

Exam Conducted by:

Tracy Stevenson, Examiner-In Charge and Senior Insurance Rate Analyst
Mary Lee Weiss, Insurance Rate Analyst

CONFIDENTIALITY STATEMENT

The Field Rating and Underwriting Bureau Examination Report contained herein, including any addendum hereto, is CONFIDENTIAL unless and until the Insurance Commissioner, by the authority vested in him pursuant to Section 735.5 of the California Insurance Code, determines otherwise.

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DEPARTMENT OF INSURANCE

MARKET CONDUCT DIVISION
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March 16, 2004

The Honorable John Garamendi
Insurance Commissioner
State of California
45 Fremont Street
San Francisco, California 94105

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Section 730 of the California Insurance Code, an examination was made of the rating and underwriting practices and procedures in California of **MERCURY INSURANCE GROUP** (NAIC Group # 0660), comprised in California of:

MERCURY CASUALTY COMPANY
(NAIC #11908, CDI #1952-1)

MERCURY INSURANCE COMPANY
(NAIC #27553, CDI #2143-6)

CALIFORNIA AUTOMOBILE INSURANCE COMPANY
(NAIC #38342, CDI #2343-2)

AMERICAN MERCURY INSURANCE COMPANY
(NAIC #16810, CDI #2253-3)

and

CALIFORNIA GENERAL UNDERWRITERS INSURANCE COMPANY, INC.
(NAIC #31046, CDI #3136-9)

hereinafter referred to as MCC, MIC, CAIC, AMIC, CGUIC or collectively as MIG, Mercury or the Companies. The California Department of Insurance will be referred to as the Department.

Due to minimal California premium for AMIC and no California premium for CGUIC, only a very limited review of these two Mercury companies was done and no policies were reviewed for either company.

This report is maintained as a confidential document pursuant to California Insurance Code Section 735.5.

SCOPE OF THE EXAMINATION

The examination covered the rating and underwriting practices of Mercury during the period from January 1, 2001 to August 31, 2002. The examination was made to discover, in general, if these and other operating procedures of the Companies conform to provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), and other applicable insurance law. This report contains only alleged violations of laws other than CIC Section 790.03 and its implementing regulations.

Reports of violations of Section 790.03 and its implementing regulations are made available for public inspection and are published on the Department's internet website pursuant to CIC Section 12938.

To accomplish the foregoing, the examination included:

1. A review of the rates, rating plans, forms, and underwriting rules made or adopted by the Companies for use in California, including a review of records of data, statistics, or information maintained by the Companies in support of or relating to such rates, forms, and rules.
2. A review of the application of such rates, forms, and rules by means of an examination of policy files and related records.
3. A review of any consumer complaints received by the California Department of Insurance in the most recent year prior to the start of the examination.

The examination was conducted primarily at the Companies' office in Brea, California.

This report is written in a "report by exception" format. This report does not present a comprehensive overview of the subject insurer's practices. The report contains only a summary of pertinent information about the lines of business examined and of the non-compliant or problematic activities or results that were discovered during the course of the examination, along with the insurer's proposals for correcting the deficiencies. In the event that a non-compliant

activity was not discovered during the examination, the insurers remain responsible for correcting that practice. Failure to identify, comment on, or criticize non-compliant activities does not constitute acceptance of such activities.

The violations alleged in this report, and any criticism of practices, have not undergone a formal administrative or judicial process.

METHOD OF DOING BUSINESS

Mercury offers its insurance products in California through 980 agents and brokers. Of these, 123 are appointed agents. Effective January 1, 2001, Mercury Insurance Services, LLC, a non-insurance limited liability corporation owned by Mercury Casualty Company, began providing management, underwriting, marketing, claims handling, and processing for all the group companies in California.

ADVERTISING MATERIALS

The examination included a review of the Companies' advertising and marketing materials, including a review of the Companies' internet site at www.mercuryinsurance.com. This site provides background information regarding the Companies as well as the products and services offered. This review revealed no violations of law within the scope of this examination.

AUTHORIZED CLASSES OF BUSINESS

The Mercury Insurance Group is authorized to transact the following classes of business in

California:

<u>Class of Insurance</u>	<u>MCC</u>	<u>MIC</u>	<u>CAIC</u>	<u>AMIC</u>	<u>CGUIC</u>
1. Life					
2. Fire	X	X	X	X	
3. Marine	X	X	X	X	
4. Title					
5. Surety	X	X	X	X	
6. Disability	X	X	X		
7. Plate Glass	X	X	X	X	
8. Liability	X	X	X	X	X
9. Workers' Compensation					
10. Common Carrier Liability		X	X	X	
11. Boiler & Machinery		X	X		
12. Burglary	X	X	X	X	
13. Credit		X	X		
14. Sprinkler	X	X	X		
15. Team and Vehicle		X	X	X	
16. Automobile	X	X	X	X	X
17. Mortgage					
18. Aircraft		X	X		
19. Mortgage Guaranty					
19.6. Legal Insurance					
20. Miscellaneous	X	X	X	X	
24. Financial Guaranty					

PREMIUM AND LOSS EXPERIENCE STUDY

The following tables show the California premium and loss experience for each Mercury company by line of business for calendar year 2001, based on data from the Statutory Page 14 of the Annual Statement filed with the Department. The "Mercury Insurance Group, Consolidated" table includes combined California premium and loss experience for all companies. The loss ratio for each line is calculated by dividing Direct Losses Incurred by Direct Premiums Earned.

(Figures with no meaning due to division by zero are indicated as "NM," as are calculations including a negative premium earned and a positive loss incurred. All ratios are capped at 999%).

There is no table for CGUIC, as this company generated no premium and incurred no losses in California in 2001.

Mercury Insurance Group, Consolidated
California Premium and Loss Experience by Line for the Year 2001

Line of Business	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Fire and Allied Lines	1,715,981	1,506,239	539,782	36%
Homeowners Multi-Peril	63,205,604	52,885,099	36,182,030	68%
Commercial Multi-Peril – (non-liability portion)	7,363,757	6,659,603	2,178,300	33%
Commercial Multi-Peril – (liability portion)	3,637,904	3,201,210	247,451	8%
Earthquake	145,849	141,635	272	.2%
Other Liability	1,800,553	1,683,492	321,901	19%
Other Private Passenger Auto Liability	666,171,930	654,626,930	387,052,812	59%
Other Commercial Auto Liability	32,388,014	30,225,085	17,963,856	59%
Private Passenger Auto Physical Damage	474,359,425	458,759,002	285,703,136	62%
Commercial Auto Physical Damage	13,369,274	12,063,691	4,848,092	40%
*Aggregate Write-Ins	6,327,065	4,894,010	3,408,854	70%
TOTALS	\$1,270,485,356	\$1,226,645,996	\$738,446,486	60%

Mercury Casualty Company
California Premium and Loss Experience by Line for the Year 2001

Line of Business	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Fire and Allied Lines	1,715,981	1,506,239	539,782	36%
Homeowners Multi-Peril	63,205,604	52,885,099	36,182,030	68%
Commercial Multi-Peril – (non-liability portion)	7,363,757	6,659,603	2,178,300	33%
Commercial Multi-Peril – (liability portion)	3,637,904	3,201,210	247,451	8%
Earthquake	145,849	141,635	272	1%
Other Liability	1,800,553	1,683,492	321,901	19%
Other Private Passenger Auto Liability	152,296,253	152,096,463	98,409,747	65%
Other Commercial Auto Liability	32,388,014	30,225,085	17,963,856	59%
Private Passenger Auto Physical Damage	112,401,515	110,592,436	74,827,642	68%
Commercial Auto Physical Damage	13,369,274	12,063,691	4,848,092	40%
TOTALS	\$388,324,704	\$371,054,953	\$235,519,073	63%

Mercury Insurance Company
California Premium and Loss Experience by Line for the Year 2001

Line of Business	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Other Private Passenger Auto Liability	460,461,055	455,171,166	258,295,729	57%
Private Passenger Auto Physical Damage	330,313,471	321,135,824	189,821,802	59%
TOTALS	\$790,774,526	\$776,306,990	\$448,117,531	58%

California Automobile Insurance Company
California Premium and Loss Experience by Line for the Year 2001

Line of Business	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
Other Private Passenger Auto Liability	53,414,622	47,359,301	30,347,336	64%
Private Passenger Auto Physical Damage	31,644,439	27,030,742	21,053,692	78%
TOTALS	\$85,059,061	\$74,390,043	\$51,401,028	69%

American Mercury Insurance Company
California Premium and Loss Experience by Line for the Year 2001

Line of Business	Direct Premiums Written (\$)	Direct Premiums Earned (\$)	Direct Losses Incurred (\$)	Loss Ratio (%)
*Aggregate Write-Ins	6,327,065	4,894,010	3,408,854	70%

*Aggregate Write-Ins consist of Mechanical Breakdown coverage.

LINES OF BUSINESS REVIEWED

Mercury Insurance Group examination included a review of the following lines of business:

PRIVATE PASSENGER AUTO

Voluntary Personal Automobile

Rates Filed: MIC – 1/30/02
MCC – 1/30/02
CAIC – 1/30/02

Rate Pages Edition: MIC – 3/1/02
MCC – 3/1/02
CAIC – 3/1/02

California Automobile Assigned Risk Plan (CAARP)

Manual Page Edition Date: March 1, 2000

Voluntary personal auto policies are written in MIC, MCC, and CAIC. MIC offers the lowest rates, with a policy form that contains minor coverage restrictions, such as no medical expense coverage for injury caused by farm-type tractors, rail operated vehicles, or other off-road vehicles, and no coverage for tapes, cassettes, and portable players. MIC policies are only marketed to California Good Drivers. The MCC and CAIC policies do not contain the coverage restrictions found in MIC, and higher rates apply. MCC and CAIC use the same rates and offer the same coverages; the only difference between MCC and CAIC is that CAIC offers a monthly payment option. Both Good Drivers and non-good drivers are eligible for MCC and CAIC.

At the time of the exam, MIC policies were sold by appointed agents and brokers under contract. MCC policies were sold by the same appointed agents and brokers who sell MIC policies. CAIC policies were sold by some of the same contracted brokers as MIC and MCC, and also by a separate group of brokers who had access to CAIC as their only Mercury product. The appointed agents and the remaining brokers under contract are not able to sell CAIC policies. Consumers shopping on Mercury's internet web-site are quoted MIC if they are Good Drivers and MCC if they are not. CAIC is not offered on the internet.

Issues regarding the coverage differences, payment plan availability, and marketing of the various products are discussed beginning on page 17 of this report.

In addition to the mandatory Good Driver and Mature Driver Improvement Course discounts, the voluntary private passenger automobile rating plans include discounts for multi-car, anti-lock brakes, anti-theft devices, persistency, academic standing, and multi-policy discount.

The Companies also write CAARP policies for all risks that are assigned to them through the assigned risk plan. All CAARP policies are issued in California Automobile Insurance Company, using the rules and rates that have been established by regulation.

HOMEOWNERS

Rates filed: 2/19/02

Rate Manual Edition: 5/15/02

Mercury Insurance Group writes HO-3 homeowners multiple peril policies, HO-4 renters policies, and HO-6 condominium owners policies. Coverage is written in Mercury Casualty Company, with credits being offered for: fire/burglary alarms, newer homes, gated communities, increased deductibles, and persistency.

COMMERCIAL AUTO

Rates filed: 1/26/00

Rate Manual Edition: 6/1/00

Mercury writes commercial automobile policies in Mercury Casualty Company. Coverage is written in three different rate tiers that are distinguished by driving record and age of driver. Mercury was unable to implement the revised rating plan within 90 days of approval and inadvertently neglected to advise the Department of the delay in implementation.

POLICY SAMPLE REVIEWED AND OVERVIEW OF FINDINGS

The examiners reviewed 250 in-force policies and 191 terminated or declined policies. In the course of the examination, and within the scope of this report, the examiners identified 21 rating errors, 12 non-rating errors, 16 termination transaction errors, and alleged violations of 30 provisions of California law.

POLICY REVIEW RESULTS

A representative sample of the policies issued by Mercury was reviewed to determine if the Companies were properly and consistently applying their adopted rates, rating plans and underwriting rules at the individual policy level. The policies were selected at random from the Companies' listing of policies issued, renewed, non-renewed, cancelled, or declined during the period from January 1, 2002 through April 30, 2002. The results of the policy file review are shown below in the In-Force Policies and Terminated and Declined Transactions tables.

The In-Force Policies table indicates the number of policies reviewed, the number of policies with rating errors, the number of policies with non-rating errors, and the error ratios resulting from this examination. In general, policies containing errors that result in premium overcharges are corrected by policy endorsement, and refunds are made to the policyholder. Policies with errors that result in undercharges are marked for corrective action at the next policy renewal date. Non-rating errors include forms, documentation, and other errors not affecting premium. (Errors that result in premium changes under \$5 or 1% of the policy premium, whichever is greater, are counted as non-rating errors.)

The Terminated and Declined Transactions table shows the number of termination transactions reviewed per line of business. These include policies that had been declined, cancelled or non-renewed. The number of policies with errors noted in the termination transaction is shown as well as the overall ratio of terminations with errors. No declinations were reviewed

for voluntary private passenger auto as all risks are considered issued and bound when submitted.

POLICY REVIEW RESULTS SUMMARY TABLES

In-Force Policies

Program	No. of Policies Reviewed	No. with Rating Errors	Rating Error Ratio %	No. with Non-Rating Errors	Non-Rating Error Ratio %
Private Passenger Auto					
MIC	29	0	0%	0	0%
MCC	30	3	10%	0	0%
CAIC	18	0	0%	0	0%
Total Voluntary Private Passenger Auto	77	3	4%	0	0%
CAARP					
CAIC	28	0	0%	0	0%
Total Private Passenger Auto	105	3	3%	0	0%
Homeowners					
MCC	97	4	4%	4	4%
Commercial Auto					
MCC	48	14	29%	8	17%
TOTALS	250	21	8%	12	5%

Terminated and Declined Transactions

Program	No. of Transactions Reviewed	No. with Errors	Error Ratio %
Private Passenger Auto			
Voluntary Private Passenger Auto	67	9	13%
CAARP	2	0	0%
Total Private Passenger Auto	69	9	13%
Homeowners	68	4	6%
Commercial Auto	54	3	6%
TOTALS	191	16	8%

GENERAL PRACTICES REVIEW RESULTS

The examination included a review of Mercury's rates, rating plans, forms, and the underwriting rules made or adopted by the Companies in California. Thirty laws were alleged to have been violated based on the insurer's error trends and general practices. A single citation in the following Violation Summary Table may be due to a general practice or error trend that affects many policyholders. One practice can also violate multiple laws or occur across multiple companies within an insurer group. The table indicates the provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), or other pertinent laws for which violations were alleged during the exam. A description of the trends and practices asserted to be in violation of these laws is provided in the final section of this report.

VIOLATION SUMMARY TABLE

	Code Citation	Description of Law
1.	CIC § 677.2(c)	The notice of cancellation for commercial insurance shall be given at least 30 days prior to the effective date of cancellation.
2.	CIC § 790.02	No person shall engage in any trade practice, which is determined pursuant to this article to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.
3.	CIC § 790.06	The Commissioner may identify unfair or deceptive practices that are not specified in Section 790.03 in accordance with the provisions of this Section.
4.	CIC § 1857	Documentation must be maintained in support of rates charged.
5.	CIC § 1861.01(c)	Insurance rates must be approved by the Commissioner prior to their use.
6.	CIC § 1861.02(b)(1)	Every person who qualifies as a Good Driver shall be eligible to purchase a Good Driver Discount Policy from the insurer of his or her choice.

	Code Citation	Description of Law
7.	CIC § 1861.02(c)	The absence of prior insurance shall not, in and of itself, be used as a criterion determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.
8.	CIC § 1861.025	This section sets forth the criteria in which a person is qualified to purchase a Good Driver Discount policy.
9.	CIC § 1861.03(a)	The business of insurance shall be subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act (Sections 51 to 53 of the Civil Code), and the antitrust and unfair business practices laws [Parts 2 (commencing with Section 16600) and 3 (commencing with Section 17500) if Division 7 of the Business and Professions Code].
10.	CIC § 1861.03(c)(1)	A notice of cancellation or non-renewal for automobile insurance must be based on nonpayment of premium, fraud or material misrepresentation, or a substantial increase in hazard.
11.	CIC § 1861.05(a)	Rates shall not be excessive, inadequate, or unfairly discriminatory.
12.	CIC § 1861.16(b)	An insurer shall offer and sell a good driver discount policy to a good driver from an insurer within a common ownership, management, or control group, which offers the lowest rates for that coverage.
13.1	CIC § 10101	No policy of residential property insurance shall be issued unless the insured is provided a copy of the California Residential Property Insurance Disclosure statement.
14.	CIC § 10102	The insurer shall have the burden of demonstrating that the California Residential Property Insurance Disclosure was provided to the applicant or insured.
15.	CIC § 11580.08	The insurer, or his agency or employee, of any automobile or motor vehicle liability policy shall not inquire of an applicant whether he has been arrested for any violation relating to vehicles, that did not result in a conviction.

	Code Citation	Description of Law
16.	CCR § 2360.0(b)	"Eligibility Guidelines" are specific, objective factors, or categories of specific, objective factors, which are selected and/or defined by an insurer, and which have a substantial relationship to an insured's loss exposure.
17.	CCR § 2360.2	Insurers shall maintain objective, specific eligibility guidelines for every line of insurance offered for sale to the public.
18.	CCR § 2360.3	An insurer shall charge each insured the lowest premium for which the insured qualifies.
19.	CCR § 2360.4	It shall be the insurer's responsibility to determine the lowest premium for which each insured qualifies. If the insurer delegates this responsibility to its agent, the insurer shall remain responsible for the agent's determination.
20.	CCR § 2360.6	The insurer shall keep documentation in the underwriting file for every policy, identifying all information for which the insurer considered in determining the premium charged.
21.	CCR § 2404	The Assigned Risk Plan shall be available to all residents of California.
22.	CCR § 2430	An applicant certifying eligibility shall be considered for assignment into the Assigned Risk Plan upon making application in good faith to the Plan.
23.	CCR § 2431	If an applicant is ineligible for Assigned Risk solely by reason of the operation of the automobile by another person, he may become eligible by agreeing to exclude coverage for that person.
24.	CCR § 2470	An applicant shall be ineligible if the applicant has violated any of the terms or conditions upon the basis of which the insurance was issued, or if the insurance was obtained through fraud or misrepresentation...
25.	CCR § 2632.5(c)(1)(A)	The "First Mandatory Rating Factor" means the public record of traffic violation convictions available from the California Department of Motor Vehicles, together with similar public records of traffic violation convictions that are available from other jurisdictions...
26.	CCR § 2632.5(d)(11)	Persistency is an allowable optional personal automobile rating factor. An insurer may apply a discount for persistency with that insurer or an affiliated insurer only.

	Code Citation	Description of Law
27.	CCR § 2632.12(b)	If a good driver is not eligible to purchase a good driver discount policy because of the driving safety record or years of driving experience of any other person, the good driver shall be eligible to purchase a good driver discount policy which excludes such other persons from coverage.
28.	CCR § 2632.13	Insurers must follow the requirements of this section in determining when accidents are "principally at-fault", and are thus chargeable.
29.	CCR § 2632.14(b)	Insurers shall offer and sell good driver discount policies under the same terms and conditions and with the same options and services that the insurer offers and sells to the public for any other automobile insurance policy.
30.	CCR § 2632.19	For purposes of cancellation or non-renewal, a risk shall constitute a substantial increase in hazard insured against as defined by this section.

SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS, AND TOTAL PREMIUM RETURNED TO CONSUMERS

During the Mercury examination, and within the scope of this report, 19 general practices or error trends were alleged as being in violation of California law. Each of these practices is summarized below, as are the Companies' response to each criticism. Regardless of the resolutions or actions taken or proposed by the insurer in this report, it is the insurer's obligation to ensure that compliance with California law is maintained continuously.

To date, \$7,723 in premium has been returned to consumers as a result of this examination. Mercury's implementation of corrective actions based on this examination will continue to be reviewed by the Field Rating and Underwriting Bureau.

UNRESOLVED CRITICISMS

1. Mercury conducts a telephone inspection of each insured to verify information contained on the insured's application. This procedure is done for personal auto, homeowners, and commercial auto business and is done after the policy is issued. Phone inspection reports are used to verify information on the application, however, there is no material underwriting information being provided that is not already included on the application. If it is unable to conduct a phone inspection, Mercury will non-renew the policy. By law, insurers may only non-renew personal auto policies due to non-payment of premium, fraud or material misrepresentation, or substantial increase in hazard as defined by regulation. In addition, regulations require eligibility guidelines for personal auto, commercial auto and homeowners business to be objective, specific, and substantially related to the insured's risk of loss. Failure to participate in a telephone inspection to confirm information already provided on the application does not meet either of these requirements. The policy review revealed two personal auto and two commercial auto policies that had been non-renewed due to the failure to complete a telephone inspection.

At the time of the exam, Mercury was waiving phone inspection reports for personal auto policies unless the risk met one or more of the criteria established to identify features that may indicate that the risk had been mis-rated. However, these guidelines ultimately left the decision open to underwriter or management judgment to determine whether a risk should be subject to inspection, even if it raised no issue under the guidelines for waivers. This allowed for the dissimilar treatment of similar risks, which is considered unfairly discriminatory.

These problems were observed in MIC, MCC, and CAIC.

CIC Sections 1861.05(a) and 1861.03(c)(1)

CCR Sections 2360.0(b), 2360.2, and 2632.19

Summary of Company Response: In regards to the materiality of phone reports, Mercury states that the determination of whether information is material is dependent upon what the applicant says orally as opposed to what he or she says on an application. Mercury states that the ability to verify the accuracy of information provided is a valuable addition to the underwriting process, and that case law has held that insurers should perform a thorough investigation and obtain accurate information by whatever means is available. The Companies argue that the regulations and statute cited do not deprive an insurer of its ability to verify statements made by applicants, because Mercury has deemed the phone reports vital to its ability to accurately underwrite and classify each risk. Mercury has also asserted that the Company has not cancelled any Good Driver policy merely because a phone inspection could not be completed. Finally, Mercury disagrees that CIC Section 1861.05(a) applies to the use of phone inspection reports, because they are an underwriting function. The statute is a rate law which "deals solely with the rate approval process". Mercury stated that it no longer waives phone reports due to workload, which had been occurring at the time of the exam, and also stated that its process, while governed by some judgment, results in rating that is appropriate to each insured's risk characteristics.

Examiner Conclusion: Although Mercury has now discontinued the practice of waiving phone reports, eliminating the potential for unfair discrimination in this regard, the problems surrounding the requirement that every risk complete a phone inspection persist. Contrary to statements made by Mercury, failure to provide information that is designed to verify information already provided by the insured does not represent a substantial increase in hazard, nor does it have a substantial relationship to the risk of loss. Mercury has made no change to correct this problem, and has not re-offered coverage to those risks who were non-renewed due to this practice. At the time of the report, this issue had not been resolved.

2. Mercury fails to allow California Good Drivers the opportunity to elect coverage between each of its three personal automobile programs. Mercury markets its automobile programs through appointed agents and independent brokers, and accepts Good Drivers into each of its three programs, written in MIC, MCC, and CAIC. MCC and CAIC offer identical rates and coverages; the only difference between MCC and CAIC is that CAIC offers a monthly payment option that is not available in any other program. Both Good Drivers and non-good drivers are eligible for MCC and CAIC policies. MIC offers the lowest rates, with a policy form that contains minor coverage restrictions. MIC policies are only marketed to California Good Drivers.

At the time of the exam, MIC policies were sold by appointed agents and brokers under contract. MCC policies were sold by the same appointed agents and brokers who sold MIC policies. CAIC policies were sold by some of the same contracted brokers as MIC and MCC, and also by a separate group of brokers who had access to CAIC as their only Mercury product. The appointed agents and the remaining brokers under contract were not able to sell CAIC policies. Consumers shopping on Mercury's internet web-site are quoted MIC if they are Good Drivers and MCC if they are not. CAIC is not offered on the internet. As a result, a Good Driver who purchased his policy over the internet or from an agent or broker who did not offer, or was not able to offer, all three products is not offered all of the coverages and terms available.

The exam also showed that the producers who do have multiple products available to sell do not consistently disclose coverage and premium differences to Good Drivers seeking a quote. During the exam, the Department attempted to obtain auto quotes through several different sources, including Mercury's website, agents, and brokers. During the quoting process, it was noted that the various sources did not disclose coverage or premium differences between the companies. This can also lead to Good Drivers not being allowed to purchase the lowest rated policy for which they qualify.

These issues involve MIC, MCC, and CAIC.
CIC Sections 1861.02(b)(1), 1861.05(a), 1861.16(b)
CCR Sections 2360.3, 2360.4 and 2632.14(b)

Summary of Company Response: Although Mercury does not agree that the Department has statutory authority to disallow multiple rate levels and class plans, the Companies have historically deferred to this interpretation. Mercury has developed products with differing levels of coverage to support the multiple rate levels and has filed and received approval for these rating plans. Mercury has stated that the statutes and regulations cited by the Department do not prohibit Mercury's current sales and marketing practices for the following reasons:

No principle of law requires that all Mercury Insurance Group programs be made available to all brokers. The Department misconstrues *Insurance Code*, Section 1861.16(b) to mandate that all agents (representatives is a term applicable to direct writers, which we are not) have access to all programs within our holding company group, and we have complied with that misconception, but that section explicitly does not include brokers.

Insurance Code, Section 1861.02(b)(1) is complied with by all of our companies; each is available to any "good driver" applicant. However, that section contains no requirement that brokers for each company have access to each of the others...And, once again, *Insurance Code*, Section 1861.05(a) only refers to unfair discrimination within an individual insurer; it does not purport to regulate insurance holding company groups and rates charged within such groups as a whole...

Mercury further states that the regulations cited, CCR Section 2360.3, 2360.4, and 2632.14(b), do not apply because each individual insurer within the holding company group offers the lowest premium available and all terms and conditions of coverage available within that individual insurer. Finally, Mercury clarified that as of September of 2003, it made changes to its producer agreements so that no producer offers CAIC as its only Mercury product. As a result of these changes, all agents or brokers who sell CAIC policies are now also able to sell MCC or MIC policies.

Examiner Conclusion: The changes Mercury has made to its producer agreements do not fully resolve the criticisms. Mercury has not agreed to take steps to ensure that each Good driver is advised of and allowed to select from the differences in the various products, the differences in the terms and conditions associated with each, and the difference in the rates for each product. At the time of the report, these issues had not been resolved.

3. Mercury's personal auto manual allows for the use of underwriter judgment to determine eligibility for new and renewal non-good driver risks who have six or more driving safety record points. This fails to comply with the regulations that require insurers to establish and use eligibility guidelines that are objective, specific, and substantially related to the insured's loss exposure. Failure to maintain such guidelines may also allow for unfair discrimination. In addition, use of judgment to determine eligibility for certain drivers violates the Substantial Increase in Hazard regulations. These regulations define those incidents that may be considered a substantial increase in hazard, including patterns of driving record activity that meet these requirements. The regulations also require that in addition to meeting the listed driving record criteria, the risk must also fail to be eligible under the insurer's "then-current underwriting rules" to purchase a policy. Since Mercury has not established eligibility guidelines for certain non-good drivers, it may violate these regulations when it makes non-renewal decisions. The policy review revealed seven policies that were improperly canceled or non-renewed as a result of the non-compliant guidelines. A similar issue was raised in the 1998 examination, in which Mercury was criticized for failing to follow established eligibility guidelines. These issues apply to MIC, MCC, and CAIC.

CIC Sections 1861.05(a) and 1861.03(c)(1)

CCR Sections 2360.0(b), 2360.2, 2632.19

Summary of Company Response: Mercury has stated that it does not believe that Proposition 103 reduced underwriting to an activity devoid of judgment, and that non-good drivers are not protected in the same manner as statutory Good Drivers. Therefore, Mercury believes it is acting within the law when it utilizes underwriter judgment in these cases, and that such judgment is necessary to maintain rates at their lowest possible level for all drivers. In addition, Mercury has expressed that it had Departmental approval following the 1998 exam to continue using underwriter judgment to determine eligibility for non-good drivers. Mercury states that at that time, the Department agreed that "...if a technically-eligible applicant has a permutation that makes him unacceptable for coverage... the underwriter can reject or terminate coverage for that risks as permitted by law, but must document his reasons for doing so."

Examiner Conclusion: Mercury's statement regarding what the Department agreed to following the 1998 examination is not complete. The addendum to the report that Mercury has quoted makes the statement provided in the response. However, the addendum goes on to state that when making deviations from its guidelines, Mercury will be required to be as consistent as possible when handling risks with similar characteristics, and that Mercury will keep its eligibility guidelines updated to assist the underwriters in ensuring consistency. Mercury has taken no steps to develop objective eligibility guidelines for non-good driver risks with six or more points to ensure that all such risks will be treated consistently. At the time of the report, this issue had not been resolved.

4. The policy review revealed that Mercury will non-renew a personal auto policy if the MVR shows a violation with no conviction, but for which the insured failed to appear. Under the law, violations may only be chargeable and used for non-renewal if they have convictions dates within the most recent 36 months. One policy was found in the policy review which had been improperly non-renewed due to this practice. The policy was discovered in MCC, but

Mercury's explanation for its actions indicates that the practice also impacts MIC and CAIC.
CIC Sections 1861.03(c)(1) and 11580.08
CCR Sections 2632.5(c)(1)(A), 2632.13 and 2632.19

Summary of Company Response: With respect to the general procedure Mercury uses to handle failure to appear situations, as well as the Department's contention that statutes and regulations govern when insurers may non-renew personal automobile policies, Mercury provided the following statement:

...The underlying statute, *Insurance Code*, Section 1861.03(c)(1) simply refers to 'a substantial increase in hazard.' While the Insurance Commissioner may issue regulations elaborating on a statute, he is not empowered to exceed its scope. And in fact, Section 2632.19 simply lists various categories that the Commissioner recognizes as meeting the definition of a 'substantial increase in hazard,' or not. Nothing in the regulation states that it is exclusive, and, in fact, it would assume clairvoyant qualities on the part of the Commissioner to assume that he can or should attempt to state all conditions meeting the definition.

Mercury further explained that it believes that it is correct to require those with warrants due to their failure to pay traffic tickets to pay for the risk that they present.

Examiner Conclusion: Contrary to the Companies' position, CCR Section 2632.19 does specify what constitutes a substantial increase in hazard and what does not. Canceling or non-renewing due to a violation for which there is no conviction does not meet these requirements. Mercury has not revised its procedure and has not re-offered coverage to the insured identified in the policy review. At the time of the report, this issue had not been resolved.

5. Correspondence between Mercury and assigned risk insureds revealed Mercury's intent to cancel policies for the lack of signed designated person exclusions, or for the failure to complete a phone questionnaire. The failure to return a named-driver exclusion for another person or complete a phone questionnaire, in and of themselves, do not make the applicant ineligible for coverage under the Plan. If the failure to provide information does not make the applicant ineligible for the Plan, then the policy cannot be canceled. Since the purpose of the assigned risk plan is to provide insurance to individuals eligible but unable to obtain insurance through ordinary methods, there are very few eligibility requirements to qualify. Unless the missing information is necessary to determine eligibility, the company cannot cancel the policy. No cancellations based on the above practice were observed. This issue pertains to CAIC.

CCR Sections 2404, 2430, 2431, 2470

Summary of Company Response: Mercury stated that it is not company practice to cancel CAARP policies for failure to complete a routine phone inspection, and has removed the reference to this from the notices that are sent to assigned risk insureds. However, Mercury does conduct phone inspections of assigned risk insureds, and has not agreed on its ability to cancel for lack of signed designated person exclusions if additional drivers are discovered during the phone inspection. Mercury stated the following:

If an insured wishes to exclude a licensed resident from coverage to obtain a lower premium or maintain acceptability under CCR Section 2431, we feel it is within our right to require the insured to sign the exclusion document that we have provided to make it a binding agreement. Without such signature, we feel that we are not receiving the proper premium for the exposure that we are insuring. This will result in higher loss costs, which in turn will result in higher premiums for all drivers insured under the plan.

Mercury further explained that in 1997, it discussed with the Department how an insurer should handle assigned risk policies when it is determined that an additional driver is in the household. At that time, the Department advised Mercury that it would be permitted to either add the driver and rate for the exposure, or exclude the driver. Mercury stated that if a person has indicated no additional licensed drivers in the household on the application, but such additional drivers are discovered during a phone interview, it requests that the additional driver be rated or excluded. If the insured refuses, or fails to return the signed exclusion, Mercury asks permission of the CAARP plan manager to cancel the policy on the grounds that the insured obtained the insurance through fraud or misrepresentation. This is allowed for under CCR Section 2470. The plan regularly grants permission for such cancellations, and Mercury has, in fact, cancelled "hundreds of insureds for this very reason".

Examiner Conclusion: As described in Mercury's response, it would be permissible for an insurer to rate for an additional exposure presented by an additional driver, or to allow the insured to exclude the person to avoid the higher premium. In addition, it would be permissible to cancel a policy once the CAARP plan manager has granted permission, if the insured committed fraud or material misrepresentation to obtain the insurance. However, CAARP is the market of last resort. Insureds who are eligible for the plan may not be cancelled. Failure to return a signed exclusion does not make a person ineligible for the plan. Mercury does not ask for permission to cancel based on the fact that the insured did not return a driver exclusion form. Instead, Mercury asks the Plan for permission to cancel due to fraud or material misrepresentation on the part of the insured. Mercury has made no change to its practices to correct this problem. At the time of the report, this issue had not been resolved.

6. The examination and a consumer complaint revealed that Mercury requires a person to have a supporting auto policy with Mercury in order to write the homeowners insurance. During the rate filing approval process for a rate increase, the Department's Rate Regulation Branch advised Mercury that it was not allowable to use the existence of supporting policies to determine eligibility for homeowners coverage. In or about June of 2002, Mercury withdrew the underwriting guideline requiring a supporting auto policy from its rate application and advised the Rate Regulation Branch that it would not require a supporting auto policy in order to write the homeowners policy.

However, during the exam, Mercury management stated verbally that the Companies never ceased the practice of requiring the auto policy in order to write the homeowners policy, and continue to enforce this requirement. This was further supported by a homeowner quote that the Department attempted to obtain on August 29, 2002. Instead of providing a Mercury quote as requested, the producer provided a quote from a different carrier, stating that, "...she was

unable to do Mercury because Mercury would only write homeowners if you already had their auto.”

In accordance with the “Objective Guidelines for rating” regulations, eligibility guidelines must be substantially related to the insured’s loss exposure. CIC Section 1861.05(a) prohibits excessive or unfairly discriminatory rates. Mercury has not shown that its rates reflect any relationship between the loss exposure of homeowners and auto policies. Without supporting data of a substantial relationship, this practice is considered unfairly discriminatory. In addition, this restriction unfairly treats similar risks disparately and is considered an unfair method of competition in violation of CIC Sections 790.06 and 1861.03(a) and the Unruh Act. Further, Mercury’s marketing plan impedes the ability of good drivers to purchase a Good Driver Discount policy from the insurer of his or her choice, in violation of CIC Section 1861.02(b)(1). These criticisms involve MCC.

CIC Sections 1861.02(b)(1), 1861.03(a), 1861.05(a), 790.02 and 790.06
CCR Sections 2360.0(b) and 2360.2

Summary of Company Response: In response to this issue, Mercury states that it believes that its marketing strategy is legitimate because the Homeowners insurance marketplace is not subject to even the limited marketing laws and regulations covering the automobile insurance marketplace, and that there is no law or regulation otherwise precluding Mercury’s marketing plan. The Companies argue that the Department has no legal grounds under the statutes and regulations cited to prohibit Mercury’s supporting auto policy requirement. Mercury provided the following statement:

The Department asserts Mercury’s plan to market homeowners policies only to those with Mercury automobile policies is unfairly discriminatory, is an illegal eligibility guideline and a “tying arrangement” in violation of antitrust laws. As a preliminary matter this issue is currently before the First District Court of Appeal for resolution and, contrary to the Department’s assertion, this marketing practice is no longer in effect. Mercury began the practice June 28, 2002 and, as a compromise with the Department, ceased the practice on August 29, 2002, while Mercury pursues the matter in court.

Examiner Conclusion: The trial court sustained the Commissioner’s demurrer on the grounds that Mercury failed to exhaust its administrative remedies. Mercury has appealed this decision. The legality of Mercury’s tying arrangement is not the issue under appeal. The Department continues to hold that the requirement for a supporting auto policy must be substantially related to the insured’s homeowners loss exposure, which has not been proven, and is therefore not an allowable eligibility guideline. The Department also holds that Mercury’s requirement for a supporting auto policy is unfairly discriminatory, and interferes with a good driver’s right to purchase a Good Driver Discount policy from the insurer of his or her choice.

In addition, the Department has confirmed that Mercury currently enforces the unapproved supporting auto business requirement, contrary to its statement that it ceased the practice as of August 29, 2002. On December 29 and December 30, 2003, the Department made calls to eight Mercury producers located in the Sacramento, Los Angeles, and San Francisco areas in

an effort to obtain homeowners policy quotes. In each of these eight cases, the producer advised the caller that Mercury would only be willing to write a Homeowners policy if Mercury had the auto policy as well. The Department also attempted to get a quote by calling Mercury's toll-free number. After selecting the quote option on the voice menu, the call was automatically directed to a broker who informed the caller that Mercury only sells homeowners coverage "as a package" with auto coverage. Mercury continues to require a supporting auto policy prior to writing a homeowners policy. At the time of this report, this issue had not been resolved.

7. The following observations were noted with respect to the capping of credits:

- A. The homeowner rating plan imposes a maximum dollar cap on the percentage of credits available for higher homeowners' deductibles. Insureds with higher base premiums (due to dwelling limit and/or territory) will be subject to the cap, and will not receive the same premium benefit as similar risks who have selected the same deductible. Consequently, this practice allows for the application of excessive rates and may result in dissimilar treatment of similar risks.
- B. The commercial auto rating plan provides for an Experience Rating Plan, a Rating Credit Plan, a Multi-Policy Discount, and a Renewal Policy Discount. Each of these four rating plans are considered objective and are applied with fixed factors. However, these rating plans are subject to a maximum combined credit of 25% as opposed to the 45% that would apply if the insured qualified for the maximum credit under each individual rating plan. The failure to allow for maximum credit eligibility based on the objective criteria of each separate rating plan is unfairly discriminatory and allows for excessive rates. There were six policies reviewed that were not given the maximum credit allowable by the individual rating plans.

These issues apply to MCC.
CIC Section 1861.05(a)

Summary of Company Response: Mercury states that there are both legal and actuarial justifications for the capping of credits, and provided the following response:

The applicability of deductible credits are addressed in Mercury's rate and class plans. Mercury's rate and class plans have been approved consistently by the Department. Once those class plans are approved, Mercury is obliged by law to apply the credits as approved. [*Insurance Code*, Section 1861.05(a).] Doing so cannot be deemed illegal or unfair [*Walker v. Allstate*(2000) 77 Cal.App. 4th 750,756.] Furthermore, credits are individually calculated in accord with actuarial principles and they become progressively less valid as they are combined with other credits; the credits may, and do, measure the same risk factors by different means. In order to account for this overlap effect, Mercury places a cap on the credits. If Mercury were to discontinue the use of caps, the credits would be disproportionately weighted, thereby resulting in the very same discrimination the Department wishes to avoid.

Examiner Conclusion: Regardless of whether Mercury included information on credit caps in its prior filings, CIC Section 1861.05(a) also states that rates may not remain in effect if they are excessive, inadequate, or unfairly discriminatory. The discounts and credits are based on objective criteria as opposed to judgment. The discount or credit amount developed for each characteristic should be extended to any insured that qualifies based on the characteristics that he or she possesses. By applying a cap, individuals who have an identical risk characteristic may not receive the same quantity of discount. Mercury has made no revisions to its rating plans or amendments to its rate filings to address this problem. At the time of the report, this issue had not been resolved

RESOLVED CRITICISMS

8. Mercury's personal auto rating plan allowed for a persistency discount based on the number of years that the insured has been previously insured either with Mercury or with any other carrier. This issue applies to MIC, MCC, and CAIC.

CIC Section 1861.02(c)

CCR Section 2632.5(d) (11)

Resolution: The Company agreed to re-file and amend the Persistency Discount in accordance with the Department's new regulation. Credits will only be allowed at policy renewal to recognize persistency with Mercury. Mercury submitted this filing to the Department on January 15, 2003.

9. The memo to the producers advising them of a personal auto non-renewal automatically includes an offer of acceptability for all good drivers. However, there is no documentation or evidence that this offer is communicated directly to the insured. Mercury failed to follow its own practice of offering driver exclusions via a memo to the agent on six policies. This is a repeat criticism from the prior examination. This issue pertains to MIC, MCC, and CAIC.

CIC Sections 1857, 1861.02(b)(1), and 1861.025

CCR Section 2632.12(b)

Resolution: Mercury has agreed to make an offer of acceptability to Good Drivers excluding the Non-Good Driver on each notice of cancellation and non-renewal. These notices are issued directly to the insured. This was implemented as of January 2003.

10. A complete rating plan reflecting final factors and relativities was not filed with the Department. Consequently, it was difficult to decipher if the rates being used by the Companies were indeed those that were filed with the Department. In addition, the four rating scenarios included in the rate filing revealed deficiencies in the rating process by reflecting incorrect factors or factors that did not exist. Thus, the final premiums denoted by the examples submitted to the Department via the rate filing were not matching those that were calculated by the Companies' rating algorithm currently in effect. This issue involved MIC, MCC, and CAIC.

CIC Section 1861.01(c)

Resolution: Mercury has submitted as of January 31, 2003, a complete set of final factors and relativities for the current filing comply in all future filings. Mercury will also check the accuracy of the scenarios provided in future filings.

11. Mercury was found to be inappropriately considering accidents as chargeable based on a bodily injury reserve revealed through CLUE reports. In one instance, the Companies failed to send a letter to the insured requesting additional information. In another case, the Companies canceled a policy without evidence that money in excess of \$500 was ever paid. In both situations, the Companies failed to investigate the accidents before taking action. This was a repeat criticism from the prior examination. This issue pertains to MIC, MCC, and CAIC.

CIC Sections 1861.02(b)(1), 1861.025, 1861.03(c)(1), and 1861.05(a)
CCR Sections 2632.13 and 2632.19

Resolution: Mercury has resolved the chargeability issue with new guidelines. The Companies will not charge for accidents if the reserves listed on CLUE are set at \$0, nor will the Companies charge for accidents unless the loss or damage exceeds the \$750 threshold. These guidelines were implemented as of March 1, 2002.

12. Mercury acknowledges delivery of the California Residential Property Insurance Disclosure (CRPID) by obtaining the insured's signature on the application. However, the policy review revealed documentation of Mercury allowing the waiving of signatures on eleven policies in regards to acknowledging receipt of the CRPID. On six other policies, the signature was merely left blank without any reference to an actual waiver. Without a signed acknowledgement by the insured, there is no way to verify that the CRPID was delivered. This issue involved MCC.

CIC Sections 10101 and 10102

Resolution: Mercury has agreed to require signatures on all applications, effective immediately, and has reminded all staff to adhere to this requirement.

13. The following observations were noted with respect to MCC's replacement cost valuation process:

- A. The homeowner policy review revealed five policies that were insured well in excess of 100% replacement cost. Excessive replacement cost ranged from 127% ITV to 155% ITV without documentation to support the overinsurance. In addition, Mercury no longer notifies its insureds of the possibility of being overinsured. The absence of a consistent procedure to address overinsurance hinders the insured's ability to make an informed decision regarding dwelling coverage.
- B. The underwriting guidelines require a minimum of 100% ITV. The policy review revealed five policies in which dwelling coverage was below 100% ITV, ranging from

85% to 97% ITV. The failure to follow established underwriting rules and insure dwellings to a minimum of 100% of replacement cost is unfairly discriminatory.

- C. Mercury had failed to prepare ITV worksheets on one new business policy and five renewal policies, reflecting the newly adopted replacement cost methodology, ADVANTEK. The failure to update policies and apply the adopted methodology consistently to all risks, new and renewal, is unfairly discriminatory.
- D. The policy review revealed on four policies, a large discrepancy in square footage between what was indicated on the application, versus what was indicated on the inspection. There was a lack of documentation in the files to indicate that Mercury had reconciled the discrepancy to determine the actual square footage in these cases. This can ultimately affect the replacement cost value of the property. The failure to reconcile discrepancies in square footage creates the potential for an excessive or inadequate rate.

CIC Sections 1857 and 1861.05(a), CCR Section 2360.6

Resolution: Mercury has agreed to notify its insureds when coverage exceeds 120% of ITV for the Standard program and 150% of ITV for the Superior program. In addition, Mercury has reminded its staff that it will not insure a property for less than 100% of replacement cost. Also, Mercury has established a procedure as of May 20, 2002 for updating replacement cost valuations periodically to ensure consistency and uniformity. To address large discrepancies in square footage, Mercury has established a procedure of using a service, Data Quick, which utilizes tax records, to resolve the issue with the homeowner.

- 14. The policy file review showed that Mercury was not consistently gathering the information needed to apply the Gated Community Credit on condominium-owners policies. The policy review sample included five policies that were eligible for the credit; none received the discount. The lack of documentation and the failure of Mercury to apply its rating plan consistently are considered unfairly discriminatory. This problem was found in MCC.
CIC Sections 1857 and 1861.05(a)
CCR Section 2360.6

Resolution: Mercury has decided to revise the rating plan to discontinue offering the gated community discount to condominium policies. This will have negligible impact on overall rate levels since credits were never being applied. A filing to reflect this change was submitted on February 1, 2003.

- 15. The homeowner review revealed Mercury's practice of applying "C-Codes" to policies when it determines that they have become ineligible for coverage. Under this practice, Mercury sets the policy to non-renew, and will not make any changes to an insured's policy that would increase its exposure. Thus, an insured whose policy has been C-coded cannot purchase additional limits or coverages. There are no mechanisms in place to remove the C-Code from those insureds who have regained their eligibility. Consequently, an insured who has regained his eligibility and whose policy is no longer set to non-renew may still be refused additional coverage by Mercury. In addition, once a policy has been non-renewed,

the C-Code stays with that insured in Mercury's system for three years, which means that insured cannot get a policy re-written with Mercury until the C-Code expires, even if he or she meets all new business criteria. This is a repeat criticism from the previous exam. This issue applies to MCC.

CIC Sections 790.02 and 1861.05(a)

Resolution: Mercury has stated that it will now allow insureds to make changes to their coverages immediately upon the correction of the exposure that was causing the "C-Code". Mercury has also advised the underwriting staff that previously C-Coded risks that had been non-renewed may be resubmitted once the risk meets all eligibility requirements, regardless of C-Code status.

16. The commercial auto policy review revealed that Mercury excludes shock losses when determining the loss ratio for the experience rating plan. The rating rules in the manual, however, fail to address the application of shock losses in the development of the loss ratio and ultimately the credit to be applied. The lack of a rating rule creates the potential for unfairly discriminatory rating. This issue applies to MCC.

CIC Section 1861.05(a)

Resolution: Mercury included a rule in the underwriting manual as of December 1, 2002 to limit the maximum charge for any one loss to \$25,000 in the experience rating calculation.

17. The commercial auto application indicates that limousines are unacceptable. However, this guideline is not reflected in the rating and underwriting manual. The policy review revealed an exception being made to the above rule if the vehicle was used for pleasure use and there was no business use exposure. The policy review also revealed Mercury's failure to consistently apply the adopted pleasure-use only exception in at least one case, in which the vehicle was rated for business use. The lack of a written eligibility guideline that is consistent with the application and the inconsistency in the underwriting process can allow for the dissimilar treatment of similar risks. This issue involves MCC.

CIC Section 1861.05(a)

Resolution: Mercury has agreed to update the underwriting manual and the application to clarify that pleasure-use only limousines are eligible, but must be submitted unbound. This will allow Mercury to determine appropriate usage prior to binding coverage. This was completed as of December 1, 2002.

18. The Rating Credit Plan allows for a 3% credit for each of the specified risk characteristics in which a risk qualifies. To be eligible, the premium must exceed \$7,500 and the applicant must have been in business for three years. Total credits under this rating plan may not exceed 15%. Six commercial auto policies contained errors in the application of the Rating Credit Plan. These errors included:

- Incorrect amount of credits applied
- Failure to apply credits

- Change in credits were unsupported
- The use of an incorrect credit worksheet

This issue applies to MCC.

CIC Sections 1857 and 1861.05(a)

CCR Section 2360.6

Resolution: Mercury has addressed the need for proper application of the Rating Credit Plan with its staff through additional training.

19. Mercury failed to give the required 30 day legal notice for cancellation on 24 commercial auto policies. This issue involves MCC.

CIC Section 677.2

Resolution: Mercury had inadvertently programmed the system to provide less than the Code-mandated time for cancellation notices. This error was corrected as of September 9, 2002.

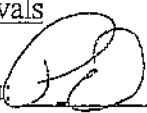
EXHIBIT E

Referral Memo

To: Pam O'Connell, Bureau Chief
Field Rating and Underwriting

Approvals

Date

Bureau: 

6-14-04

From: Tara Sandidge
Insurance Rate Analyst

Division: _____

Date: June 14, 2004

Branch: _____

Re: MERCURY INSURANCE GROUP

Request: The recently filed Field Rating and Underwriting (FRUB) examination of the Mercury Insurance Group resulted in eight unresolved criticisms. We need Legal to issue a notice of Non-Compliance against Mercury to achieve compliance on the unresolved issues. In addition, a penalty is warranted due to the number of unresolved issues and due to the overall number and severity of the issues found in the examination.

Issues: The FRUB examination of the Mercury Insurance Group resulted in eight unresolved criticisms. There were eleven additional practices alleged to be in violation of California law.

Standards: The FRUB standard is to request compliance with the State of California's Insurance statutes and regulations. A penalty is appropriate considering the type, nature, and number of the violations.

Background: The FRUB examination of the Mercury Insurance Group resulted in nineteen overall criticisms including eight unresolved criticisms (seven listed as such in the report, with an eighth discovered after the exam was filed).

The seven unresolved criticisms include the following:

1. Mercury required telephone inspections to be conducted to verify information already provided on the personal auto insurance application. If a phone inspection was unable to be obtained for a risk, then Mercury non-renewed the policy. The failure to obtain a telephone inspection report does not represent a substantial increase in hazard nor does it have a substantial relationship to the risk of loss. Mercury has not agreed to change this practice or to re-offer coverage to those non-renewed due to this practice.
2. Mercury fails to allow California Good Drivers the opportunity to select coverage from each of the three personal auto programs offered. Mercury does not allow equal access to all of its personal auto programs to its appointed agents and independent brokers. In addition, those producers who do have access to all three programs do not consistently disclose coverage and premium differences to Good Drivers seeking insurance coverage.

3. Mercury's underwriting guidelines for non-good drivers allow subjectivity in eligibility determination for drivers with six or more driver safety record points. As Mercury lacks definitive eligibility criteria, non-renewal decisions are made based upon subjective evaluation of a driver's safety record and do not meet the requirements of the substantial increase in hazards provisions to non-renew an auto policy. Mercury has not drafted guidelines for non-good drivers which satisfy the requirements to be specific, objective, and substantially related to an insured's loss exposure.
4. Mercury will use a violation without a conviction appearing on an insured's MVR to non-renew policies. The use of violations without convictions does not meet the criteria prescribed by the substantial increase in hazard regulations as a legitimate basis for non-renewal. Mercury has not agreed to revise this procedure or to re-offer coverage to insureds non-renewed due to this practice.
5. The examination uncovered correspondence between Mercury and its assigned risk insureds which indicated that Mercury intended to cancel policies due to the lack of a signed named insured driver exclusion, or for the failure to complete phone questionnaires. Current CAARP laws prevent cancellation of a policy due to the failure to provide information which would not make the insured ineligible under the plan.
6. Mercury continues to require that an applicant for a homeowners policy must have a supporting auto policy in order to be eligible for coverage. Mercury had previously indicated that it no longer required applicants for homeowners coverage to have a Mercury auto policy. The policy review, along with recent attempts made by Departmental staff to obtain a homeowners only quote, revealed that Mercury is still requiring a supporting auto policy.
7. Mercury's commercial auto rating plan limits the percentage of credit available for deductibles and discounts to which insureds are entitled. The commercial auto plan allows a maximum of 25% credit total for the four discounts offered under the plan. The maximum credit available from the four discounts combined is 45% without the credit limitation. The imposition of a maximum credit is unfairly discriminatory as some insureds will not receive the full premium benefit of the credit and also allows for the application of excessive rates.
8. Continued use of a persistency discount that utilizes prior insurance with unaffiliated carriers, and combines driving safety record with length of persistency to determine eligibility for the discount. (The report shows this as resolved, but new information from the company indicates that they never made the filing promised to correct the problem.)

Additional resolved issues had enough negative impact on consumers that they should be used to calculate an appropriate penalty. A complete description of these issues is contained in the examination report but the most important included the following:

1. Inconsistency in the offering of PPA coverage to Good Drivers excluding ineligible non-good drivers. This is a repeat issue from the prior examination.
2. The use of "C-codes" on homeowners policies, to designate risks who were to non-renewed due to failure to meet guidelines. C-coded policies were not allowed to make mid-term changes to coverage or limits. The C-code remained in the system for three years, even if the insured corrected the problem and regained eligibility, meaning no coverage changes were allowed. Also, those who were non-renewed and returned to Mercury at a later date meeting all new business criteria were not allowed to purchase a policy until the C-code expired. This is a repeat criticism from the prior exam.
3. Failure to consistently allow 30 days advance notice of cancellation on commercial auto policies.

Company Response:

Mercury Insurance Group's responses to the unresolved criticisms were lengthy and centered primarily around what they considered to be our inadequate reading of the Code and related regulations. The complete responses will be included as exhibits for the attorney. Ultimately, Mercury does not believe that we have the authority to require them to change a their business practices.

Final Analysis: The arguments provided by the Mercury Insurance Group do not adequately address the issues, and Mercury has not rectified the unresolved issues. The practices are unfair and should be discontinued, and penalties are warranted. Also, the existence of repeat criticisms from the prior exam further emphasize the need for penalties

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PROOF OF SERVICE
BY OVERNIGHT OR U.S. MAIL, FAX TRANSMISSION,
EMAIL TRANSMISSION AND/OR PERSONAL SERVICE

State of California, City of Los Angeles, County of Los Angeles

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 6330 South San Vicente Boulevard, Suite 250, Los Angeles, California 90048, and I am employed in the city and county where this service is occurring.

On October 11, 2023, I caused service of true and correct copies of the document entitled

CONSUMER WATCHDOG'S CORRECTED PETITION TO INTERVENE AND PARTICIPATE AND NOTICE OF INTENT TO SEEK COMPENSATION

upon the persons named in the attached service list, in the following manner:

1. If marked FAX SERVICE, by facsimile transmission this date to the FAX number stated to the person(s) named.
2. If marked EMAIL, by electronic mail transmission this date to the email address stated.
3. If marked U.S. MAIL or OVERNIGHT or HAND DELIVERED, by placing this date for collection for regular or overnight mailing true copies of the within document in sealed envelopes, addressed to each of the persons so listed. I am readily familiar with the regular practice of collection and processing of correspondence for mailing of U.S. Mail and for sending of Overnight mail. If mailed by U.S. Mail, these envelopes would be deposited this day in the ordinary course of business with the U.S. Postal Service. If mailed Overnight, these envelopes would be deposited this day in a box or other facility regularly maintained by the express service carrier, or delivered this day to an authorized courier or driver authorized by the express service carrier to receive documents, in the ordinary course of business, fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 11, 2023 at Los Angeles, California.



Kaitlyn Gentile

Service List

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