

SEP 25 2013

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE  
BY 

In the Matter of:

**MERCURY CASUALTY COMPANY,**  
NAIC # 11908,  
Respondent.

) Docket No. 13A-113-INS

) **CONSENT ORDER**

Examiners for the Department of Insurance (the "Department") conducted a target market conduct examination of Mercury Casualty Company ("MCC"). In the Report of Target Market Conduct Examination of the Market Conduct Affairs of Mercury Casualty Company, the examiners allege that MCC violated A.R.S. §§20-263, 20-461, 20-1632, 20-1653 and 20-2106.

Mercury Casualty Company wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

**FINDINGS OF FACT**

1. Mercury Casualty Company is authorized to transact property and casualty insurance pursuant to a Certificate of Authority issued by the Director.

2. The Director authorized the examiners to conduct a target market conduct examination of Mercury Casualty Company. The examination covered the time period from January 1, 2012 through December 31, 2012 and concluded on June 4, 2013. Based on their findings, the examiners prepared the "Report of Target Market Conduct Examination of Mercury Casualty Company" dated December 31, 2012.

3. The examiners reviewed 50 of 3,881 private passenger automobile policies surcharged for an at-fault accident during the time frame of the examination

1 and found that MCC failed to notify 12 insureds that an at-fault accident was the reason  
2 for their policy premium increase.

3 4. The examiners reviewed 2 of 2 private passenger automobile policies  
4 non-renewed for underwriting reasons during the time frame of the examination and  
5 found that MCC failed provide 2 policyholders with the specific reason for the non-  
6 renewal.

7 5. The examiners reviewed 23 of 23 homeowner policies non-renewed for  
8 underwriting reasons and 50 of 50 homeowner policies cancelled for underwriting  
9 reasons during the time frame of the examination and found that MCC failed provide  
10 the specific reason for the non-renewal or cancellation to 13 policyholders.

11 6. The examiners found two claim authorization disclosure forms used  
12 during the time frame of the examination that failed to specify that the authorization  
13 remains valid for no longer than the duration of the claim and advise the individual or a  
14 person authorized to act on behalf of the individual that they are entitled to receive a  
15 copy of the authorization form. (see Exhibit A)

16 7. The examiners reviewed 79 of 79 homeowner claims settled during the  
17 time frame of the examination and found that MCC failed to correctly calculate and pay  
18 the Transaction Privilege Tax on 7 homeowner settlements.

19 8. The examiners found that the Company incorrectly cited the California  
20 Department of Insurance and/or California statutes, instead of Arizona, in claims  
21 correspondence to 6 claimants during the time frame of the examination.

22 9. Following the examiner review of the Company's homeowner claim  
23 settlement practices, MCC resettled the 7 homeowner claims which resulted in  
24 restitution payments to insureds of \$244.52, plus \$24.46 interest.

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**CONCLUSIONS OF LAW**

1. MCC violated A.R.S. §20-263(A) by failing to provide insureds with the specific reason for an at-fault accident surcharge.

2. MCC violated A.R.S. §20-1632(A)(1) by failing to provide private passenger automobile insureds with the specific reason for the notice of non-renewal.

3. MCC violated A.R.S. §20-1653 by failing to provide homeowner insureds with the specific reason for policy non-renewal or cancellation.

4. MCC violated A.R.S. §20-2106(8)(b) and (9) by using claim authorization forms that failed to contain a compliant *Authorization for the Release of Information*.

5. MCC violated A.R.S. §20-461(A)(6) by failing to correctly calculate and pay the Transaction Privilege Tax on homeowner claim settlements.

6. Grounds exist for the entry of the following Order in accordance with A.R.S. §§20-220 and 20-456 and 20-2117.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

- 1. Mercury Casualty Company shall:
  - a. provide insureds with the specific reason for an at-fault accident surcharge.
  - b. provide the specific reason for private passenger automobile notice of non-renewal.
  - c. provide the specific reason for homeowner notice of non-renewal or cancellation.
  - d. use claim authorization disclosure forms that contain a compliant *Authorization for the Release of Information*.

1 e. correctly calculate and pay the Transaction Privilege Tax on  
2 homeowner claim settlements.

3 f. identify the correct state and/or state statutes on all claims  
4 correspondence.


5 2. Within 90 days of the filed date of this Order, Mercury Casualty Company  
6 shall submit to the Arizona Department of Insurance, for approval, evidence that MCC  
7 implemented corrections and communicated these corrections to the appropriate  
8 personnel, regarding the issues outlined in Paragraph 1 of the Order section of this  
9 Consent Order. Evidence of corrective action and communication thereof includes, but  
10 is not limited to, memos, bulletins, E-mails, correspondence, procedures manuals, print  
11 screens, and training materials.

12 3. The Department shall, through authorized representatives, verify that  
13 MCC has complied with all provisions of this Order.

14 4. Mercury Casualty Company shall pay a civil penalty of \$19,000.00 to the  
15 Director for remission to the State Treasurer for deposit in the State General Fund in  
16 accordance with A.R.S. §20-220(B). MCC shall submit the civil penalty to the Market  
17 Oversight Division of the Department prior to the filing of this Order.

18 5. The Report of Target Market Examination of Mercury Casualty Company  
19 of December 31, 2012, including the letter with their objections to the Report of  
20 Examination, shall be filed with the Department upon the filing of this Order.

21 DATED at Arizona this 24<sup>th</sup> day of September, 2013.

22  
23   
24 Germaine L. Marks  
25 Director of Insurance

1 CONSENT TO ORDER

2 1. Mercury Casualty Company has reviewed the foregoing Order.

3 2. Mercury Casualty Company admits the jurisdiction of the Director of  
4 Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the  
5 entry of the Conclusions of Law and Order.

6 3. Mercury Casualty Company is aware of the right to a hearing, at which it  
7 may be represented by counsel, present evidence and cross-examine witnesses.  
8 Mercury Casualty Company irrevocably waives the right to such notice and hearing  
9 and to any court appeals related to this Order.

10 4. Mercury Casualty Company states that no promise of any kind or nature  
11 whatsoever was made to it to induce it to enter into this Consent Order and that it has  
12 entered into this Consent Order voluntarily.

13 5. Mercury Casualty Company acknowledges that the acceptance of this  
14 Order by the Director of the Arizona Department of Insurance is solely for the purpose  
15 of settling this matter and does not preclude any other agency or officer of this state or  
16 its subdivisions or any other person from instituting proceedings, whether civil, criminal,  
17 or administrative, as may be appropriate now or in the future.

18 6. KEN KITZMILLER, who holds the office of  
19 VICE PRESIDENT of Mercury Casualty Company, is authorized to enter  
20 into this Order for them and on their behalf.

21 **MERCURY CASUALTY COMPANY**

22  
23  
24 8/22/2013  
Date

By 

1 COPY of the foregoing mailed/delivered  
2 this 25th day of September , 2013, to:

3 Germaine L. Marks  
4 Director of Insurance  
5 Mary Butterfield  
6 Assistant Director  
7 Consumer Affairs Division  
8 Helene I. Tomme  
9 Market Examinations Supervisor  
10 Market Oversight Division  
11 Dean Ehler  
12 Assistant Director  
13 Property and Casualty Division  
14 Kurt Regner  
15 Assistant Director  
16 Financial Affairs Division  
17 David Lee  
18 Chief Financial Examiner  
19 Alexandra Shafer  
20 Assistant Director  
21 Life and Health Division  
22 Chuck Gregory  
23 Special Agent Supervisor  
24 Investigations Division

25 DEPARTMENT OF INSURANCE  
2910 North 44th Street, Suite 210  
Phoenix, AZ 85018

James S. Kasza, CPCU, AU  
Assistant Vice-President, Underwriting  
Mercury Casualty Company  
PO Box 203010  
Austin, Texas 78720-3010

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## EXHIBIT A

### **Claim Authorization Disclosure**

These forms fail to comply with A.R.S. § 20-2106(8)(b) and (9).

The following table summarizes these application form findings:

<b>Form Description / Title</b>	<b>Form #</b>	<b>Statute Provision</b>
Wage Authorization (4 pages including cover letter)	None	8(b) and 9
Authorization for Release and/or Disclosure of Medical Information	C7A	8(b) and 9