

5/22/06

CALIFORNIA DEPARTMENT OF INSURANCE  
LEGAL DIVISION  
Auto Compliance Bureau  
Jon A. Tomashoff, CPCU, Bar No. 173458  
Senior Staff Counsel  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Telephone: 415-538-4119  
Facsimile: 415-904-5490  
Attorney for The California Department of Insurance

**BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA**

In the Matter of

File No. NC-03027545  
FIRST AMENDED:  
NOTICE OF NONCOMPLIANCE PURSUANT  
TO CALIFORNIA INSURANCE CODE  
SECTION 1858.1  
ORDER TO SHOW CAUSE, STATEMENT OF  
CHARGES, AND NOTICE OF HEARING  
PURSUANT TO CALIFORNIA INSURANCE  
CODE SECTION 790.035/790.05  
ACCUSATION PURSUANT TO CALIFORNIA  
INSURANCE CODE SECTION 704

MERCURY INSURANCE  
COMPANY,  
MERCURY CASUALTY  
COMPANY, AND  
CALIFORNIA AUTOMOBILE  
INSURANCE COMPANY,  
Respondents.

TO: MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY, and CALIFORNIA  
AUTOMOBILE INSURANCE COMPANY:  
NOTICE OF NONCOMPLIANCE PURSUANT TO CALIFORNIA  
INSURANCE CODE SECTION 1858.1<sup>1</sup>

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California  
("Commissioner") has good cause to believe that your rates, rating plans or rating systems and  
underwriting rules violate and have violated the California Insurance Code, as described below.

1.

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

2.

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

Findings of Fact:

Incorporated: 1 - 50, 56, 57

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

Conclusions of Law:

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

3.

From July 1, 1996, to April 11, 2003, Respondents willfully permitted their insurance agents to charge "broker fees" to Respondents' policyholders. In charging these fees, Respondents' agents acted in the course and scope of their agency. Under California law, all payments by policyholders which are a part of the price of insurance, including all sums paid to an insurance agent, are considered premium. Consequently, Respondents constructively received the "broker fees" (i.e. premium) collected by their agents. Respondents did not receive the Commissioner's prior approval to charge or receive the moneys constituting the "broker fees." As a result of permitting its agents to charge and collect the broker fees, Respondents constructively charged and collected premium in excess of the rates approved for them by the Commissioner, in violation of section 1861.01(c).

4.

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

5.

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

ORDER TO SHOW CAUSE. STATEMENT OF CHARGES.

AND NOTICE OF HEARING PURSUANT TO

CALIFORNIA INSURANCE CODE SECTION 790.035/790.05

6.

From July 1, 1996, to April 11, 2003, Respondents published advertisements that compared Respondents' premiums with the premiums of competitors. The advertisements indicated that Respondents' rates were lower than the rates of Respondents' competitors. In the advertisements, Respondents willfully failed to disclose that broker fees might be charged in addition to the premium. By not mentioning the broker fees in advertisements, Respondents willfully misrepresented the actual price insurance consumers could expect to pay for insurance from Respondents, and thus deceived and misled consumers. The advertisements were also deceptive and misleading because the undisclosed broker fees in some cases made the price of insurance from Respondents greater than the price from one or more of the competing insurers cited in the advertisements. Respondents comparative rate advertisements violated sections 790.03(a) and (b).

7.

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

8.

The facts alleged in paragraphs 6 and 7 establish that Respondents willfully engaged in unfair or deceptive acts or practices defined in sections 790.03, and constitute grounds to impose a civil penalty of \$10,000 for each act. For the purpose of calculating the total amount of the civil penalty under section 790.035, a separate act shall exist for each and every date on which any Respondent's advertisement of the type described in paragraphs 6 and 7 appeared in any newspaper, appeared in any correspondence mailed to any prospective insured in this state, or appeared in any television commercial. Respondents are ordered to appear at a hearing, on a date to be determined and separately noticed, and show cause, if any exists, why it is not liable as alleged in this pleading.

#### ACCUSATION

9.

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

Dated: March 22, 2006 CALIFORNIA DEPARTMENT OF INSURANCE

By /s/

Jon A. Tomashoff, CPCU  
Senior Staff Counsel

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<sup>1</sup> All statutory references are to the California Insurance Code, unless otherwise indicated.

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