



OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY  
COMMISSIONER

**FILED**

MAY 8 2006

*SP.*

IN THE MATTER OF:

AMERICAN MERCURY INSURANCE COMPANY  
MERCURY INSURANCE COMPANY OF FLORIDA  
2005 Market Conduct Examination

CASE NO.: 84728-06

CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement between AMERICAN MERCURY INSURANCE COMPANY ("AMERICAN MERCURY"), MERCURY INSURANCE COMPANY OF FLORIDA ("MERCURY OF FLORIDA") and the OFFICE OF INSURANCE REGULATION ("OFFICE"). Following a complete review of the entire record, and upon consideration thereof, and being otherwise fully advised in the premises, the OFFICE OF INSURANCE REGULATION hereby finds as follows:

1. The Office of Insurance Regulation has jurisdiction over the subject matter of, and parties to, this proceeding.
2. AMERICAN MERCURY is a foreign property and casualty insurer domiciled in Oklahoma that is authorized to transact insurance business in Florida, and is subject to the jurisdiction and regulation of the OFFICE pursuant to the Florida Insurance Code.
3. MERCURY OF FLORIDA is a domestic property and casualty insurer authorized to transact insurance business in Florida that is subject to the jurisdiction and regulation of the OFFICE pursuant to the Florida Insurance Code.
4. AMERICAN MERCURY and MERCURY OF FLORIDA are subsidiaries of MERCURY GENERAL CORPORATION. References to MERCURY contained herein collectively

refer to AMERICAN MERCURY, MERCURY OF FLORIDA and any other related entities under which MERCURY GENERAL CORPORATION transacts the business of insurance in the State of Florida.

5. Pursuant to Section 624.3161, Florida Statutes, on or about July 18, 2005, the OFFICE began a market conduct examination of AMERICAN MERCURY and MERCURY OF FLORIDA in Clearwater, Florida, for the period of January 1, 2002 to the present date, to ensure compliance with the Florida Insurance Code. The Office has concluded, and MERCURY does not contest for the limited purposes of this consent order, that MERCURY has violated the following provisions of the Florida Insurance Code or Florida Administrative Code:

Section 626.9541(1), F.S. – Refusal to insure or continue to insure based solely on failure to place collateral business

Section 626.9541(1)(j), F.S. – Failure to maintain complaint-handling procedures

Section 627.410(1), F.S. – Use of unfiled and unapproved forms

Section 627.062, F.S. - Use of unfiled and unapproved rates

Section 627.0645, F.S. – Failure to file annual rate filing or certification

Section 627.0651(13)(a), F.S. - Failure to file unwritten underwriting rules with the Office

Section 627.4085(1), F.S. – Failure to disclose agent name or identification number on an application for insurance

Section 624.318, F.S. – Failure to maintain policyholder records; failure to provide records, documents, or information relating to the subject of the market conduct examination

Section 627.421(1), F.S. – Failure to mail or deliver policies to insureds within sixty (60) days after the effectuation of coverage

Section 626.9741(6), F.S. – Failure to maintain and adhere to established written procedures in regards to the use of credit reports and credit scores

Section 627.4091(5)(b), F.S. – Failure to provide specific reasons for denial, cancellation or nonrenewal

Rule 69O-170.006, F.A.C. – Use of unfiled and unapproved manuals

Rule 69O-137.009, F.A.C. – Failure to file Quarterly Supplemental Reports

Rule 69O-170.007(2)(a), F.A.C. – Failure to implement approved rates timely

Section 626.112(2), F.S. – Use of unappointed agents or customer representatives

Section 627.0651(1)(b), F.S. – Failure to file use and file rates timely

6. MERCURY agrees that upon the execution of this Consent Order it shall be subject to the following terms and conditions:

(a) MERCURY shall pay to the Office a fine of five hundred thousand dollars (\$500,000.00) and shall reimburse the Office for costs of investigation in the amount of five hundred thousand dollars (\$500,000.00) both within thirty (30) days of the execution of this Consent Order.

(b) MERCURY has agreed to mail or deliver every policy of insurance to policyholders no later than sixty (60) days after the effectuation of coverage, in accordance with Section 627.421(1), Florida Statutes.

(c) Within sixty (60) days of the execution of this Order, MERCURY shall complete a review of all property and casualty personal and commercial insurance forms and rates currently in use in this state, make appropriate form and rate filings to assure that only approved forms and rates are used in this state, and certify to the Commissioner that the appropriate filings were made. MERCURY shall implement the use of the filed rates and forms within ninety (90) days of approval.

(d) MERCURY voluntarily ceased writing new homeowners business in this state effective December 22, 2005. MERCURY shall not write new homeowners policies until such time as new homeowners forms and rates are approved by the OFFICE, and shall honor and service any existing homeowners contracts in accordance with the provisions of the Florida Insurance Code and the Florida Administrative Code.

(e) MERCURY has submitted a new homeowners filing to comply with the requirements of Florida Senate Bill 1486 (2005), to correct rating errors, and to apply appropriate credits. Within sixty (60) days of the execution of this Consent Order, MERCURY shall refund to policyholders all premium overcharges resulting from such rating errors and from computer processing errors, and shall submit a report to the OFFICE detailing the reimbursed premiums, with a line-item breakdown of the

number of such insureds, the policy number, the name and address of each insured, the amount of each reimbursement, the total premium reimbursed, and the date of each reimbursement.

(f) MERCURY shall immediately establish procedures to ensure annual rate filings or certifications are timely submitted to the OFFICE, pursuant to Section 627.0645, Florida Statutes.

(g) MERCURY shall immediately cease and desist from requiring collateral business as an underwriting requirement, and shall file amended manual pages or underwriting guidelines demonstrating the elimination of this requirement within sixty (60) days of the execution of this Consent Order.

(h) MERCURY shall immediately establish and implement procedures to maintain a complete record of all complaints, and shall submit such procedures to the OFFICE for review and approval within sixty (60) days of the execution of this Consent Order.

(i) Within sixty (60) days of the execution of this Consent Order, MERCURY shall file with the OFFICE for review and approval, standards for the acknowledgement of communications and investigation with respect to claims, and for the prompt notification to an insured or claimant of any additional information necessary for the processing of claims, in a manner compliant with the Florida Insurance Code and the Florida Administrative Code.

(j) Within sixty (60) days of the execution of this Consent Order, MERCURY shall file with the Office for review and approval procedures to provide a written explanation of the basis of denial of denied claims.

(k) Within sixty (60) days of the execution of this Consent Order, MERCURY shall file with the OFFICE for review and approval procedures for the timely payment of claim settlements, pursuant to Section 627.4265, Florida Statutes.

(l) Within sixty (60) days of the execution of this Consent Order, MERCURY shall file with the OFFICE for review and approval complete copies of all agent, rating, or underwriting manuals, guidelines, or procedures used in this state, and implement the approved manuals, guidelines, or procedures within ninety (90) days of approval. MERCURY shall not utilize any such manuals,

guidelines or procedures without prior review and approval by the Office in accord with applicable rule and statute.

(m) MERCURY shall establish and implement procedures to ensure the timely filing of policy forms, manuals or guidelines, and rates with the OFFICE, and within sixty (60) days of the execution of this Consent Order, file such procedures for review and approval.

(n) MERCURY shall establish and implement written procedures for the use of credit reports and credit scores, and file such procedures with the OFFICE for review and approval within sixty (60) days of the execution of this Consent Order. MERCURY shall henceforth maintain compliance in regards to the use of credit reports and credit scores in accordance with the Florida Insurance Code, the Florida Administrative Code, the Fair Credit Reporting Act ("FCRA"), and the Fair and Accurate Credit Transactions Act ("FACT").

(o) MERCURY shall immediately establish and implement written procedures to provide required disclosures for policies cancelled for underwriting reasons, and within sixty (60) days of the execution of this Consent Order, submit such procedures to the OFFICE for review and approval.

(p) Within sixty (60) days of the execution of this Consent Order, MERCURY shall communicate by letter, which shall be approved by the OFFICE in advance, with all personal residential policyholders questioning whether or not the insured incurred property damage to a pool cage or similar pool structure as a result of any 2004 tropical storm or hurricane, and whether such claim was denied or otherwise went unreported. The letter shall state that MERCURY will not seek reimbursement for any claim previously paid. MERCURY shall in good faith attempt to adjust and settle any such claim within thirty (30) days of receiving notification from an insured, unless the claim was previously paid. Within ninety (90) days of the execution of this Consent Order, MERCURY shall submit a report to the OFFICE of the status of such claims, with a line-item breakdown of the number of letters sent to policyholders, the numbers of claims reported, the name and address of each policyholder, each policy number, the amount reported per claim, the settlement amount, and the date of settlement. MERCURY shall provide additional status reports to the OFFICE beginning ninety (90) days after the date of the first report, and

every ninety (90) days thereafter for a period of not less than one (1) year, or until all reported claims are closed, unless terminated at the OFFICE's sole discretion.

(q) MERCURY shall immediately cease and desist from charging a premium for mold, and shall continue to provide mold coverage for a covered peril up to policy limits on all policies, until such time as new homeowners forms, mold forms and mold rates are filed and approved.

(r) Within sixty (60) days of the execution of this Order, MERCURY shall refund to insureds all mold premiums paid from the first date MERCURY charged a rate for Mold Coverage Endorsement P-98 form 03-1575 dated 11/03, continuing through the date MERCURY ceased charging a rate for mold coverage. Within ninety (90) days of the execution of this Order, MERCURY shall submit a report to the OFFICE detailing the reimbursed premiums, with a line-item breakdown of the number of such insureds, the policy number, the name and address of each insured, the amount of each reimbursement, the total premium reimbursed, and the date of each reimbursement.

(s) MERCURY shall immediately cease and desist from denying homeowners hurricane claims on the basis of vacancy or unoccupancy. Within sixty (60) days of the execution of this Order, MERCURY shall communicate by letter, which shall be approved by the OFFICE in advance, with all personal residential policyholders questioning whether or not the insured incurred property damage as a result of any 2004 tropical storm or hurricane, and whether the claim was denied or otherwise went unreported for reasons related to vacancy or unoccupancy. The letter shall state that MERCURY will not seek reimbursement for any claim previously paid. MERCURY shall in good faith attempt to adjust and settle any such claim within thirty (30) days of receiving notification from an insured, unless the claim was previously paid. Within ninety (90) days of the execution of this Order, MERCURY shall submit a report to the OFFICE of the status of such claims, with a line-item breakdown of the number of letters sent to policyholders, the numbers of claims reported, the name and address of each policyholder, the policy number, the amount reported per claim, the settlement amount, and the date of settlement. MERCURY shall provide additional status reports to the OFFICE beginning ninety (90)

days after the date of the first report, and every ninety (90) days thereafter for a period of not less than one (1) year, or until all reported claims are closed, unless terminated at the OFFICE's sole discretion.

(t) MERCURY shall immediately submit all quarterly supplemental reports (QUASR) due to the OFFICE, and shall henceforth timely file all reports in accordance with the Florida Insurance Code and the Florida Administrative Code.

(u) MERCURY shall within sixty (60) days of this consent order make the necessary filings and, within ninety (90) days of receipt of the appropriate approvals, implement procedures to ensure that all applications for an insurance policy disclose the name and license identification number of the insurance agent writing such policy, and shall henceforth ensure that all MERCURY insurance agents are properly licensed and appointed by the Florida Department of Financial Services.

(v) MERCURY shall, within sixty (60) days of this consent order, make the necessary filings to remove from any insurance application or contract every provision that disclaims liability for acts of any agent, adjuster, service representative, or customer service representative in the scope of the licensee's employment or appointment.

(w) MERCURY shall ensure that procedures relating to the billing, payment, premium acceptance, and reinstatement of policies comply with applicable law.

(x) MERCURY shall cease and desist from charging a managing general agent ("MGA") fee, and if not already submitted, shall submit filings to remove such a fee from all policies written in this state. Within ninety (90) days of the execution of this Order, MERCURY shall refund to policyholders all MGA fees related to private passenger automobile coverage paid from the first date MERCURY charged a MGA fee to Florida policyholders, continuing through the date MERCURY ceases charging a MGA fee. Within ninety (90) days of the execution of this Consent Order, MERCURY shall submit a report to the OFFICE detailing the reimbursed MGA fees, with a line-item breakdown of the number of such insureds, the policy number, the name and address of each insured, the amount of each reimbursement, the total fees reimbursed, and the date of each reimbursement.

(y) MERCURY shall implement procedures to ensure for the timely notification and proper cancellation or nonrenewal of insurance policies, including proper proof of mailing, in accordance with the Florida Insurance Code and the Florida Administrative Code.

(z) MERCURY shall immediately establish and implement procedures for the notification of insureds of their right to receive personal injury protection (PIP) benefits.

(aa) MERCURY has voluntarily agreed to examine all policies rescinded or cancelled for the period of June 2002 to the date of this Consent Order, and to readjust and pay claims on the rescinded or cancelled policies if improperly denied. Within sixty (60) days of the execution of this Order, MERCURY shall submit a report to the OFFICE showing the number of policies that will be reviewed, the criteria for reviewing the policies, a reasonable schedule for reviewing the policies which schedule shall not exceed a total review period of eighteen (18) months, and providing for periodic reports to the OFFICE not less frequently than at ninety (90) day intervals. The initial and subsequent reports shall delineate the status of such policies or claims, with a line-item breakdown of the number of policies rescinded or cancelled, the number of claims improperly denied, the name and address of each policyholder, each policy number, the original reason for rescission or cancellation, the readjusted settlement amount, the date of settlement, the estimated number of policies remaining and subject to review, and the expected schedule for the review of the remaining policies. MERCURY shall provide such additional reports to the OFFICE beginning ninety (90) days after the date of the first report, and every ninety (90) days thereafter for a period of not less than one (1) year, or until all claims are closed, unless terminated at the OFFICE's sole discretion.

(bb) MERCURY shall provide notification to the OFFICE of all changes to officers, directors or senior managers of AMERICAN MERCURY, MERCURY OF FLORIDA, and any other subsidiary of MERCURY doing business in this state that occurred from the period of July 2005 through the date of execution of this Consent Order. Such notification shall include a description of the qualifications of each officer, director or senior manager, and other required information as provided in Section 628.261, Florida Statutes. MERCURY shall ensure its management in the Florida office has

substantial experience in the Florida homeowners and automobile market. MERCURY shall advise the OFFICE of any substantial changes in senior staff for the two (2) year period following the execution of this Order.

(cc) Pursuant to Section 627.0651(1)(b), Florida Statutes, an insurer may use a "Use and File" rate, but the rate filing must be filed with the OFFICE no later than thirty (30) days beyond the effective date of the new rate. On April 11, 2005, MERCURY OF FLORIDA submitted private passenger automobile filing FCP 05-04092 for a rate increase implemented effective February 14, 2005. This Consent Order hereby approves filing FCP 05-04092. MERCURY shall immediately refund premiums charged to insureds for the rate increase from February 14, 2005 through and including March 11, 2005. Within sixty (60) days of the execution of this Order, MERCURY shall submit a report to the OFFICE detailing the reimbursed premiums, with a line-item breakdown of the number of such insureds, the name and address of each policyholder, each policy number, the amount of premium reimbursed to each insured, and the date of each reimbursement.

(dd) MERCURY shall refrain from the submission of filings for any new homeowners or automobile programs or policies through other affiliates until such time as MERCURY has complied with the terms of this Order to the satisfaction of the OFFICE.

(ee) MERCURY shall henceforth comply with all of the provisions of the Florida Insurance Code and the Florida Administrative Code.

7. MERCURY is hereby placed on notice of the requirements of the above referenced sections of law and agrees that any future violations of these sections by MERCURY may be deemed willful, subjecting MERCURY to appropriate penalties.

8. The OFFICE and MERCURY expressly waive a hearing in this matter, and the making of Findings of Fact and Conclusions of Law by the OFFICE and all further and other proceedings herein to which the parties may be entitled by law. MERCURY hereby knowingly and voluntarily waives all rights to challenge or to contest this Order, in any forum now available, including the right to any administrative proceeding, circuit or federal court action, or any appeal.

9. Within one hundred eighty days (180) days of the execution of this Consent Order, MERCURY shall provide to the OFFICE certification by an officer of the Company that corrective actions outlined in this Consent Order have been completed, except as expressly provided herein. MERCURY agrees that failure to adhere to one or any of the above terms and conditions of this Consent Order would be a violation of a lawful order of the OFFICE and would pose an immediate threat to the public welfare.

10. Executive Order 13224, signed by President George W. Bush on September 23, 2001, blocks the assets of terrorists and terrorist support organizations identified by the Office of Foreign Assets Control of the Treasury Department. The Order also prohibits any transactions by U.S. persons involved in the blocked assets and interests. The list of identified terrorists and terrorist support organizations is periodically updated at the Treasury Department's website, [www.treas.gov/ofac](http://www.treas.gov/ofac). MERCURY shall maintain and adhere to procedures necessary to detect and prevent prohibited transactions with individuals and entities which have been identified at the Office of Foreign Assets Control website of the Treasury Department.

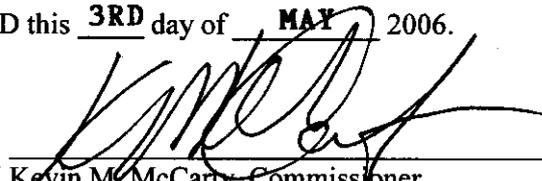
11. Except as noted above, each party to this action shall bear its own costs and attorney's fees.

THEREFORE, the agreement between MERCURY, AMERICAN MERCURY, MERCURY OF FLORIDA and the OFFICE, the terms and conditions of which are set forth above, is approved.

FURTHER, all terms and conditions above are hereby ORDERED.

DONE AND ORDERED this 3RD day of MAY 2006.



  
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Kevin M. McCarty, Commissioner  
Office of Insurance Regulation

By execution hereof, AMERICAN MERCURY INSURANCE COMPANY consents to entry of this Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind AMERICAN MERCURY INSURANCE COMPANY to the terms and conditions of this Consent Order and has personal knowledge of the Application and the information provided therein.

AMERICAN MERCURY INSURANCE COMPANY

Corporate Seal

By: *John E. Sutton*  
Title: *Vice President*  
Date: *5.01.06*

On *May 1, 2006* before me, *Carrie Murrillo*, personally appeared *John E. Sutton*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon whose behalf the person acted, executed the instrument.

Subscribed and sworn to before me this *1st* day of *May*, 2006.

Signature *Carrie Murrillo*  
(Signature of Notary Public)

[NOTARIAL SEAL]

My Commission Expires:



By execution hereof, MERCURY INSURANCE COMPANY OF FLORIDA consents to entry of this Order, agrees without reservation to all of the above terms and conditions, and shall be bound by all provisions herein. The undersigned represents that he or she has the authority to bind MERCURY INSURANCE COMPANY OF FLORIDA to the terms and conditions of this Consent Order and has personal knowledge of the Application and the information provided therein.

MERCURY INSURANCE COMPANY OF FLORIDA

Corporate Seal

By:

Title:

Date:

John E. Sutton  
Vice President  
5.01.06

On May 1, 2006 before me, Carrie Murrillo, personally appeared John E. Sutton, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon whose behalf the person acted, executed the instrument.

Subscribed and sworn to before me this 1st day of May, 2006.

Signature

Carrie Murrillo  
(Signature of Notary Public)

[NOTARIAL SEAL]

My Commission Expires:



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