

FINANCIAL SERVICES COMMISSION

**FLORIDA OFFICE OF INSURANCE REGULATION
MARKET INVESTIGATIONS**

**TARGET MARKET CONDUCT
FINAL EXAMINATION REPORT**

OF

MERCURY INSURANCE COMPANY OF FLORIDA

AS OF

DECEMBER 16, 2005

**NAIC COMPANY CODE: 11202
NAIC GROUP CODE: 0660**



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PURPOSE AND SCOPE OF EXAMINATION

Under authorization of the Financial Services Commission, Florida Office of Insurance Regulation (Office), Market Investigations, pursuant to Section 624.3161, Florida Statutes, a target market conduct examination of Mercury Insurance Company of Florida (Company) was performed by RSM McGladrey, Inc. and Office personnel. The scope of this examination was January 1, 2002 through June 30, 2005. The examination began October 18, 2005 and the on-site work ended on December 16, 2005.

The purpose of this examination was to ensure the Company's compliance with Florida Statutes and Rules, and Office of Insurance Regulation Directives and Emergency Orders when writing private passenger automobile business in the State of Florida. The areas to be examined identified by the OIR included, but were not limited to, the following:

- Claims
- Underwriting
- Complaint Handling
- Policyholder Service
- Forms and Rates
- Producers

The Company records were examined at its regional office located at 1901 Ulmerton Road, Clearwater, Florida 33762-2307. In reviewing materials for this report, the examiners relied primarily on records maintained by the Company. Some testing normally performed using sampling techniques were performed instead by using electronic means for sorting, filtering and recalculating the total population to be reviewed during the examination. Procedures for conducting the examination were in accordance with the Market Conduct Examiner's Handbook produced by the National Association of Insurance Commissioners and with directions provided by the Office.

PRIVATE PASSENGER AUTOMOBILE CLAIMS REVIEW

PAID CLAIMS

Sample Findings:

A total of fifty (50) paid claim files were examined.

Three (3) errors involving three (3) claims (or 6% of the sample) were noted. These errors are as follows:

- (1) Three (3) out of five (5) personal injury protection (PIP) claim files examined indicated that the Company did not mail or deliver a notification of the insured's rights within twenty-one (21) days after receiving notice of an injury. The failure of the Company to send these notices within the required time period is a violation of Section 627.7401(2), Florida Statutes.

DENIED CLAIMS

Sample Findings:

A total of seventy-nine (79) denied claim files were examined. Over one hundred (100) claims files were originally requested because the examiners had determined that the Company's denied claims list included claims that were closed without payment for reasons including lapse of coverage and because the loss was less than the insureds' deductible. The claims for this sample were manually selected to avoid having the Company pull as many "closed without payment" claims as possible.

Fourteen (13) errors involving fourteen (13) claims (or 16% of the sample) were noted. These errors are as follows:

- (1) Four (4) claims were denied and the insured's policy cancelled for material misrepresentation because the insured vehicle was being driven by an unlisted driver who lived in the household at the time of loss. Since these policies were cancelled after the date of loss, the insureds had coverage at the time of loss and the claims should have been paid. The failure of the Company to pay these claims is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), Florida Administrative Code.
- (2) One (1) claim was denied because the commercial signage on the vehicle had not been declared on the insured's application. This policy was set to be nonrenewed; however, it cancelled for non-payment before the nonrenewal was effective. Since this policy was cancelled after the date of loss, the insured had coverage at the time of loss and this claim should have been paid. The failure of the Company to pay this claim is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes and Rule 69O-167.002(1), F.A.C.
- (3) One (1) claim was denied and the insured's policy cancelled for material misrepresentation because the insured had not disclosed business use of the vehicle. Since this policy was cancelled after the date of loss, the insured had coverage at the time of loss and this claim should have been paid. The failure of the Company to pay this claim is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), F.A.C.
- (4) One (1) claim was denied and the insured's policy rescinded for material misrepresentation because the insured did not disclose business use on their application. This insured's application did show their occupation as "merchandiser". Since the application only queried the applicant regarding using the insured vehicle for deliveries and the insured stated that they made no deliveries and carried no merchandise in the vehicle, the insured had not been adequately informed that the Company considered her vehicle to be used for business. Also, this insured was commuting home from her office, not making business calls, at the time of loss. The policy states: "Business use does not include: a. traveling to and from your residence to your primary or part time place of employment". The failure of the Company to pay this claim is a violation of

Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), F.A.C.

- (5) One (1) claim was denied and the insured's policy rescinded for material misrepresentation because the insured did not disclose a rebuilt title on their application. Under "Title Status" the title form showed "Used" and under "Kit Code" the title form showed "Rebuilt". Review of the file indicated that the insured vehicle had a rebuilt engine, and was not a rebuilt vehicle, so this claim should have been paid. The failure of the Company to pay this claim is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), F.A.C.
- (6) One (1) claim was denied and the insured's policy rescinded for material misrepresentation because the insured did not disclose a prior loss on their application. Since, by Florida law, the Company has a sixty (60) day period from policy inception in which to verify underwriting information and this policy had been in force for more than sixty (60) days, this claim should have been paid. The failure of the Company to pay this claim is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), F.A.C.
- (7) Two (2) claims were denied because of non-cooperation by the insured. Since these claims were for third-party losses and sufficient information was in the file to establish that the insured was at fault in the accident, the Company lacked adequate reason to deny these claims. The failure of the Company to pay these claims is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), F.A.C.
- (8) One (1) claim was denied because the insured was going home from their work as a house cleaner at the time of loss; however, the Company's policy states: "Business use does not include: a. traveling to and from your residence to your primary or part time place of employment". The insured did not carry cleaning supplies or equipment in their vehicle. The failure of the Company to pay this claim is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes, and Rule 69O-167.002(1), F.A.C.
- (9) One (1) claim was denied because the vehicle had commercial signage. Since the Company did not rescind this policy at the time of loss, this insured had coverage and the claim should have been paid. The failure of the Company to pay this claim is a violation of Section 626.9541(1)(i)2., 3.b. and d., Florida Statutes and Rule 69O-167.002(1), F.A.C.

The examination of claims revealed a large number of duplicate claim files. Several files were inadequately documented to support the Company's denial. When duplicate claims were found, the Company closed one of the files. The examiners did not find any evidence of duplicate payments in the sample.

UNDERWRITING REVIEW

Sample Findings:

A total of fifty (50) private passenger automobile policy files were examined.

Fifty (50) errors involving fifty (50) policy files (or 100% of the sample) were noted. These errors are as follows:

- (1) Fifty (50) rating errors were noted disclosing that the Company's computer system used a different rating methodology than the one filed with and approved by the Office. This did not result in premium errors. The Company's failure to file the rating methodology in use constitutes a violation of Section 627.062(2)(a), Florida Statutes.

COMPLAINT HANDLING REVIEW

COMPLAINTS RECEIVED

The Office provided the following complaints to the examiners to verify how they were handled by the Company:

NOI #1-138279335

This insured was denied coverage because she had left her vehicle at a repair shop to have the engine replaced and, after making two (2) trips to the shop and several telephone calls, she went back to the shop and found it to be out of business and her engine missing. The insured said she had attempted to file a police report, but the police indicated this was a matter for small claims court. A review of the claim file indicated that, after over three (3) months of trying to locate the shop owner and running data searches on the insured and reviewing the insured's underwriting file to "rule out misrep", the Company told the insured this was a service issue with the repair shop and her policy did not cover that type of loss. The Office asked the examiners to have the Company review the file again. After the Company reexamined the file, it agreed this loss should have been covered and paid the insured \$3,308.50 on September 19, 2005.

NOI #1-110482111

The Office asked the examiners to review this claim because it believed that the Company had attempted to rescind this policy without justifiable grounds in order to avoid paying the claim, and to ensure that the Company was not attempting to avoid responsibility for the acts of its appointed agent. After a good deal of discussion with the Office, the Company relented and paid the insured; however the examiners were asked to review the Company's underwriting protocols and rescission practices. Various sections of this report address underwriting deficiencies.

NOI #1-77239126

This policy was rescinded and the insured's claim for hurricane damage to his automobile was denied because of an undisclosed felony. Emergency Order 78059-04-CO, prohibiting insurance companies from terminating policies for a stated period, was in effect during this period but the Company said that it did not apply to rescissions. On October 20, 2004, the Office's Legal Department stated that rescissions were not exempt from the emergency order and were not permissible. The Office also stated that coverage for this loss was payable and the policy must be reinstated. A review by the examiners indicated that the Company still has not paid this claim or reinstated this insured's policy.

NOI #1-35267857

Although this insured's complaint was settled, the Office stated that the Company was in violation of Section 627.4085, Florida Statutes, because the required agent license identification number was not on the application and asked the examiners to review the Company's practice concerning this subject. The examiners determined during the review of underwriting files that ten (10) of the fifty (50) applications reviewed (or 20% of the sample) did not contain the agent's license identification number as required by Florida law.

NOI #1-29654387

Although the Office stated that it did not appear that the Company had improperly denied this insured's claim, it did appear that the Company was in violation of Section 626.451, Florida Statutes, because it had used an unappointed agent. The Office asked the examiners to review the Company's practice concerning this subject. The examiners determined during the review of underwriting files that seven (7) of the fifty (50) applications reviewed (or 14% of the sample) indicated that new business had been accepted from unappointed agents or customer representatives.

NOI #1-28384203

Although the claim that formed the basis of this insured's complaint was paid after the insured hired an attorney, the Office stated that the Company was in violation of Section 627.4085, Florida Statutes, because the required agent license identification number was not on the application and asked the examiners to review the Company's practice concerning this subject. The examiners determined during the review of underwriting files that ten (10) of the fifty (50) applications reviewed (or 20% of the sample) did not contain the agent's license identification number as required by Florida law.

NOI #1-42514801

This insured's complaint stated that, although he had provided the Company with proof of duplicate coverage, the Company refused to flat cancel his policy and return the total premium paid. A review of the insured's payment history showed that after the Company received this complaint from the Office, it returned the balance of the insured's premium on July 15, 2004.

NOI #1-42288686

This third party complained to the Office because the Company took over three (3) months to complete its investigation and issue payment for the damages to her vehicle. The Company's insured had pulled from a gas station attempting to turn left and hit the claimant's rear bumper. When the examiners reviewed this claim file, they could not find any basis or reason to justify the Company's delay in paying the claimant.

NOI #1-10267891

This insured filed a complaint with the Office because the Company had denied her claim and rescinded her policy due to material misrepresentation. The insured was underwritten in the Company's Select tier in which employment is an underwriting requirement. The insured stated on her application that she was employed at her sister's flower shop. During the Company's recorded interview with the insured after her accident, the insured stated that she was an unemployed widow receiving Social Security for herself and her children. When

asked about the employment she had shown on her application, the insured stated that she did make deliveries approximately three (3) days a week for her sister, but she was not employed by the flower shop and was paid in cash when she worked. After a review of the insured's claim file, the examiners determined that there were credibility issues with the insured and they were unable to determine that the claim had been unfairly denied. The claimant has hired an attorney, however, and, although the Company has told the attorney that it stands by its denial, a claim log note indicated it would re-open the file if the insured filed suit.

POLICYHOLDERS SERVICE REVIEW

POLICYHOLDER SERVICE PROCEDURES

A review of the Company's policyholder service procedures showed the following error:

- (1) The Company was unable to demonstrate that it mailed or delivered policies to policyholders not later than sixty (60) days after the effectuation of coverage, in violation of Section 627.421(1), Florida Statutes.

CANCELLATIONS AND NONRENEWALS

Sample Findings:

A total of fifty (50) cancellations and nonrenewals were examined.

Twenty (20) errors involving twenty (20) cancellations and nonrenewals (or 40% of the sample) were noted as follows:

- (1) One (1) error was due to the Company improperly cancelling a policy for underwriting reasons after the sixty (60) day underwriting period allowed. The Company's improper cancellation of this policy is a violation of Rule 69O-167.002(1), F.A.C.
- (2) Two (2) errors were due to the Company's failure to provide the insured with at least forty-five (45) days notice of cancellation. The Company's failure to provide at least forty-five (45) days notice is a violation of Section 627.728(3)(a), Florida Statutes.
- (3) Sixteen (16) errors were due to the Company's failure to provide the applicant with required disclosure information. If the reason for refusing to insure is based on a loss underwriting history or a report from a consumer reporting agency, to the extent applicable, the Company is required to identify the loss underwriting history and notify the applicant of his or her right to obtain a copy of the report from the consumer reporting agency. The Company's failure to provide the required disclosure is a violation of Section 627.4091(5)(b), Florida Statutes.
- (4) One (1) error was due to the Company's failure to provide to the examiner an underwriting file selected for review. The Company's failure to produce this underwriting file is a violation of Section 624.318(2), Florida Statutes.

PRODUCERS REVIEW

Sample Findings:

A total of fifty (50) underwriting files were examined.

Thirty-six (36) errors involving thirty (30) underwriting files (or 60% of the sample) were noted as follows:

- (1) Twenty-nine (29) policy applications did not display the producing agent's license identification number and/or the name or legible name of the producing agent. This failure of the Company to require the producing agent's license identification number and a legible producing agent name on all applications submitted is a violation of Section 627.4085(1), Florida Statutes.
- (2) Seven (7) applications accepted by the Company were signed by an agent or customer representative that was not appointed by the Company.

EXAMINATION FINAL REPORT

The Office hereby issues this report as the Final Report, which is based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Company.

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May 2, 2006

VIA HAND DELIVERY

Mr. James Harris
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Office of Insurance Regulation
200 East Gaines Street
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**Re: American Mercury Insurance Company - Market Conduct Examination
Report as of December 16, 2005
Mercury Insurance Company of Florida - Market Conduct Examination
Report as of December 16, 2005**

Dear Mr. Harris:

American Mercury Insurance Company and Mercury Insurance Company of Florida have reviewed the above-referenced examination reports. Although the companies disagree with numerous findings set forth in the reports as either factually or legally incorrect, in order to facilitate the prompt resolution of these matters and for the limited purposes of these proceedings, they have elected not to contest the reports.

Sincerely,



Edward L. Kutter