

MARKET CONDUCT EXAMINATION REPORT

OF

AMERICAN MERCURY INSURANCE COMPANY

AND

MERCURY CASUALTY COMPANY

AS OF

August 31, 2015

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

Property and Casualty Division
Market Conduct Section

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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

I, Karen S. Gerber, Senior Insurance Market Examiner of the Bureau of Insurance, do hereby certify that the annexed copy of the Market Conduct Examination Report of Mercury Casualty Company and American Mercury Insurance Company as of August 31, 2015, conducted at the companies' offices in Bridgewater, New Jersey and Clearwater, Florida, is a true copy of the original Report on file with the Bureau and also includes a true copy of the companies' response to the findings set forth therein, and a true copy of the Bureau's review letters and the State Corporation Commission's Order in Case No. INS-2018-00160 finalizing the Report.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed
the official seal of the Bureau
at the City of Richmond, Virginia,
this 23rd of July, 2018.

Karen S. Gerber
Examiner in Charge

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INTRODUCTION

Pursuant to the authority of § 38.2-1317 of the Code of Virginia, a comprehensive examination has been made of the private passenger automobile and homeowner lines of business written by American Mercury Insurance Company and Mercury Casualty Company at their offices in Bridgewater, New Jersey and Clearwater, Florida.

The examination commenced April 11, 2016 and concluded December 20, 2016. Brandon Ayers, Andrea D. Baytop, William T. Felvey, Karen S. Gerber, Ju'Coby Hendrick, Melody Morrisette, and Gloria V. Warriner, examiners of the Bureau of Insurance, Teresa Ratliff, Office Technician, and Joyclyn M. Morton, Market Conduct Manager of the Bureau of Insurance, participated in the work of the examination. The examination was called in the Examination Tracking System on September 4, 2015 and was assigned the examination number of VA097-M19. The examination was conducted in accordance with the guidelines contained in the National Association of Insurance Commissioners Market Regulation Handbook.

COMPANY PROFILES*

American Mercury Insurance Company was incorporated November 30, 1962 under the laws of Oklahoma as American Fidelity Insurance Company and began business December 1, 1962. The present title was adopted on August 1, 1997.

The origin of Mercury Casualty Company as now constituted dates back to January 6, 1961 when it was incorporated under the laws of California. It began business April 6, 1962. Paid up capital of \$10,000,000 consists of 200,000 shares of common stock at a par value of \$50 per share. A total of 400,000 common shares are authorized.

* Source: Best's Insurance Reports, Property & Casualty, 2015 Edition.

The table below indicates when the companies were licensed in Virginia and the lines of insurance that the companies were licensed to write in Virginia during the examination period. All lines of insurance were authorized on the date the companies were licensed except as noted in the table.

GROUP CODE: 660	AMIC	MCC
NAIC Company Number	16810	11908
LICENSED IN VIRGINIA	7/27/1978	12/28/1999
LINES OF INSURANCE		
Accident and Sickness	X	
Aircraft Liability	X	
Aircraft Physical Damage	X	
Animal		
Automobile Liability	X	X
Automobile Physical Damage	X	X
Boiler and Machinery	X	
Burglary and Theft	X	
Commercial Multi-Peril		X
Credit		
Farmowners Multi-Peril	X	
Fidelity	X	
Fire	X	X
General Liability	X	X
Glass	X	
Homeowners Multi-Peril	X	X
Inland Marine	X	X
Miscellaneous Property	X	X
Ocean Marine	X	
Surety	X	
Water Damage	X	
Workers' Compensation		

The table below shows the companies' premium volume and approximate market share of business written in Virginia during 2015 for those lines of insurance included in this examination.* This business was developed through independent agents.

COMPANY AND LINE	PREMIUM VOLUME	MARKET SHARE
American Mercury Insurance Company		
Private Auto Liability	\$6,733,672	.25%
Private Auto Physical Damage	\$4,137,557	.20%
Mercury Casualty Company		
Private Auto Liability	\$1,272,143	.05%
Private Auto Physical Damage	\$905,681	.04%
Homeowners Multiple Peril	\$3,591,445	.17%

* Source: The 2015 Annual Statement on file with the Bureau of Insurance and the Virginia Bureau of Insurance Statistical Report.

SCOPE OF THE EXAMINATION

The examination included a detailed review of the companies' private passenger automobile and homeowner lines of business written in Virginia for the period beginning September 1, 2014 and ending August 31, 2015. This review included rating and underwriting, policy terminations, claims handling, forms, policy issuance,¹ statutory notices, agent licensing, complaint-handling, and information security practices. The purpose of this examination was to determine compliance with Virginia insurance statutes and regulations and to determine that the companies' operations were consistent with public interest.

This Report is divided into three sections, Part One – The Examiners' Observations, Part Two – Corrective Action Plan, and Part Three – Recommendations. Part One outlines all of the violations of Virginia insurance statutes and regulations that were cited during the examination. In addition, the examiners cited instances where the companies failed to adhere to the provisions of the policies issued on risks located in Virginia. Finally, violations of other related laws that apply to insurers, characterized as "Other Law Violations," are also noted in this section of the Report.

In Part Two, the Corrective Action Plan identifies the violations that rise to the level of a general business practice and are subject to a monetary penalty.

In Part Three, the examiners list recommendations regarding the companies' practices that require some action by the companies. This section also summarizes the violations for which the companies were cited in previous examinations.

The examiners may not have discovered every unacceptable or non-compliant activity in which the companies engaged. The failure to identify, comment on, or criticize

¹ Policies reviewed under this category reflected the companies' current practices and, therefore, fell outside of the exam period.

specific companies' practices does not constitute an acceptance of the practices by the Bureau.

STATISTICAL SUMMARY

The files selected for the review of the rating and underwriting, termination, and claims handling processes were chosen by random sampling of the various populations provided by the companies. The relationship between population and sample is shown on the following page.

In other areas of the examination, the sampling methodology is different. The examiners have explained the methodology for those areas in corresponding sections of the Report.

The details of the errors will be explained in Part One of this Report. General business practices may or may not be reflected by the number of errors shown in the summary.

AREA	<u>Population</u> Sample Requested			<u>FILES</u> <u>REVIEWED</u>	<u>FILES NOT</u> <u>FOUND</u>	<u>FILES WITH</u> <u>ERRORS</u>	<u>ERROR</u> <u>RATIO</u>
	<u>AMI</u>	<u>MC</u>	<u>TOTAL</u>				
<u>Private Passenger Auto</u>							
New Business ¹	<u>7790</u> 75	<u>0</u> 0	<u>7790</u> 75	74	0	53	72%
Renewal Business ²	<u>7613</u> 50	<u>2584</u> 25	<u>10197</u> 75	36	0	26	72%
Co-Initiated Cancellations ³	<u>351</u> 25	<u>0</u> 0	<u>351</u> 25	11	0	2	18%
All Other Cancellations ³	<u>4619</u> 30	<u>213</u> 16	<u>4832</u> 46	30	0	11	37%
Nonrenewals ³	<u>11</u> 4	<u>23</u> 5	<u>34</u> 9	8	0	1	13%
<u>Homeowner</u>							
New Business	<u>0</u> 0	<u>1132</u> 50	<u>1132</u> 50	50	0	50	100%
Renewal Business ⁴	<u>0</u> 0	<u>4735</u> 75	<u>4735</u> 75	63	0	63	100%
Co-Initiated Cancellations ³	<u>0</u> 0	<u>94</u> 28	<u>94</u> 28	13	0	8	62%
All Other Cancellations ³	<u>0</u> 0	<u>811</u> 30	<u>811</u> 30	22	1	9	41%
Nonrenewals	<u>0</u> 0	<u>12</u> 10	<u>12</u> 10	8	0	6	75%
<u>Claims</u>							
Auto ⁵	<u>2105</u> 50	<u>353</u> 50	<u>2458</u> 100	99	0	54	55%
Property ⁶	<u>0</u> 0	<u>225</u> 84	<u>225</u> 84	77	0	30	39%

Footnote¹ - 1 file was a rescission and was not reviewed.

Footnote²- files removed from sample

Footnote³- Company's termination data was miscoded

Footnote⁴- 12 Files were not true renewal policies and were not reviewed

Footnote⁵- 1 file was reviewed by the Bureau's Consumer Service Section and was not reviewed

Footnote⁶- 1 file was an inquiry only, 6 files were reported to the Bureau by the company prior to the examination and were not reviewed.

PART ONE - THE EXAMINERS' OBSERVATIONS

This section of the Report contains all of the observations that the examiners provided to the companies. These include all instances where the companies violated Virginia insurance statutes and regulations. In addition, the examiners noted any instances where the companies violated any other Virginia laws applicable to insurers.

RATING AND UNDERWRITING REVIEW

Automobile New Business Policies

The examiners reviewed 74 new business policy files. As a result of this review, the examiners found overcharges totaling \$6,502.00 and undercharges totaling \$2,682.00. The net amount that should be refunded to insureds is \$6,502.00 plus six percent (6%) simple interest.

- (1) The examiners found one violation of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured a written Adverse Underwriting Decision (AUD) notice.
- (2) The examiners found two violations of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.
- (3) The examiners found 75 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
 - a. In 27 instances, the company failed to use the correct discounts and/or surcharges.
 - b. In four instances, the company failed to apply the correct surcharge points for accidents and/or convictions.
 - c. In seven instances, the company failed to use the correct symbol and/or model year factor.

- d. In eight instances, the company failed to use the correct tier eligibility criteria.
 - e. In 11 instances, the company failed to use the correct base and/or final rates.
 - f. In 13 instances, the company failed to use the correct increased limits factor.
 - g. In five instances, the company failed to use the filed Financial Responsibility Fee.
- (4) The examiners found 16 violations of § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle. The company attempted to exclude a driver contrary to the statute.

Automobile Renewal Business Policies

The examiners reviewed 36 renewal business policy files. As a result of this review, the examiners found overcharges totaling \$813.00 undercharges totaling \$454.00. The net amount that should be refunded to insureds is \$813.00 plus six percent (6%) simple interest.

- (1) The examiners found two violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.
- (2) The examiners found one violation of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.
- (3) The examiners found 50 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

- a. In 16 instances, the company failed to use the correct discounts and/or surcharges.
 - b. In one instance, the company failed to apply the correct surcharge points for accidents and/or convictions.
 - c. In 18 instances, the company failed to use the correct symbol and/or model year.
 - d. In five instances, the company failed to use the correct base and/or final rates.
 - e. In ten instances, the company failed to use the correct increased-limits factor.
- (4) The examiners found two violations of § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle. The company attempted to exclude a driver contrary to the statute.
- (5) The examiner found one violation of § 38.2-2234 B of the Code of Virginia. The company failed to update credit information at least once in a three-year period or when requested by the insured.

Homeowners New Business Policies

The examiners reviewed 50 new business policy files. As a result of this review, the examiners found overcharges totaling \$422.00 and undercharges totaling \$1,417.00. The net amount that should be refunded to insureds is \$422.00 plus six percent (6%) simple interest.

- (1) The examiners found two violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company failed to list all forms applicable to the policy on the declarations page.

- (2) The examiners found 21 violations of § 38.2-502 1 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company listed a discount on the declaration page that did not apply to the policy.
- (3) The examiners found 78 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
- a. In four instances, the company failed to use the correct discounts and/or surcharges.
 - b. In 60 instances, the company failed to use the correct base and/or final rates.
 - c. In three instances, the company failed to use the correct construction type.
 - d. In 11 instances, the company failed to use the correct public protection class.

Homeowners Renewal Business Policies

The examiners reviewed 63 renewal business policy files. As a result of this review, the examiners found overcharges totaling \$1,481.00 and undercharges totaling \$1,956.00. The net amount that should be refunded to insureds is \$1,481.00 plus six percent (6%) simple interest.

- (1) The examiners found two violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company failed to list all forms applicable to the policy on the declarations page.
- (2) The examiners found 22 violations of § 38.2-502 1 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company listed discounts on the declarations page that did not apply to the policy.

- (3) The examiners found 99 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
- a. In 12 instances, the company failed to use the correct discounts and/or surcharges.
 - b. In three instances, the company failed to use the correct territory.
 - c. In seven instances, the company failed to use the correct tier eligibility criteria.
 - d. In 62 instances, the company failed to use the correct base and/or final rates.
 - e. In one instance, the company failed to use the correct construction type.
 - f. In nine instances, the company failed to use the correct public protection class.
 - g. In five instances, the company failed to use the filed rounding rule.
- (4) The examiners found 36 violations of § 38.2-2126 B of the Code of Virginia. The company failed to update the insured's credit information at least once in a three-year period.

TERMINATION REVIEW

The examiners requested cancellation files in several categories due to the difference in the way these categories are treated by Virginia insurance statutes, regulations, and policy provisions. The breakdown of these categories is described below.

Company-Initiated Cancellations – Automobile PoliciesNOTICE MAILED PRIOR TO THE 60TH DAY OF COVERAGE

The examiners reviewed ten automobile cancellations that were initiated by the companies where the notice was mailed prior to the 60th day of coverage in the initial policy period. As a result of this review, the examiners found no overcharges and no undercharges.

The examiners found one occurrence where the company failed to comply with the provisions of the insurance contract. The company failed to provide advance notice of cancellation to the insured.

NOTICE MAILED AFTER THE 59TH DAY OF COVERAGE

The examiners reviewed one automobile cancellation that was initiated by the companies where the notice was mailed on or after the 60th day of coverage in the initial policy period or at any time during the term of a subsequent renewal policy. As a result of this review, the examiners found no overcharges and no undercharges.

- (1) The examiners found one violation of § 38.2-2208 A of the Code of Virginia. The company failed to obtain proof of mailing the cancellation notice to the insured.
- (2) The examiners found one violation of § 38.2-2212 D of the Code of Virginia. The company cancelled the insured's motor vehicle policy for a reason not permitted by the statute.
- (3) The examiners found one violation of § 38.2-2212 E of the Code of Virginia. The company failed to mail the notice of cancellation to the insured at least 45 days before the cancellation effective date.

All Other Cancellations – Automobile PoliciesNONPAYMENT OF THE PREMIUM

The examiners reviewed 16 automobile cancellations that were initiated by the companies for nonpayment of the policy premium. As a result of this review, the examiners found overcharges totaling \$39.90 and no undercharges. The net amount that should be refunded to insureds is \$39.90 plus six percent (6%) simple interest.

- (1) The examiners found three violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.
 - a. In one instance, the company failed to calculate the earned premium correctly.
 - b. In two instances, the company charged a reinstatement fee that was not on file with the Bureau.
- (2) The examiners found three violations of § 38.2-2208 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the insured.
- (3) The examiners found two violations of § 38.2-2208 B of the Code of Virginia.
 - a. In one instance, the company failed to provide proper notice of cancellation to the lienholder.
 - b. In one instance, the company failed to retain the electronic notification of cancellation to the lienholder.
- (4) The examiners found one violation of § 38.2-2212 E of the Code of Virginia. The company failed to send notice of cancellation to the insured.

REQUESTED BY THE INSURED

The examiners reviewed 14 automobile cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. As a result of this review, the examiners found overcharges totaling \$95.60 and undercharges totaling

\$43.22. The net amount that should be refunded to insureds is \$95.60 plus six percent (6%) simple interest.

- (1) The examiners found two violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.
- (2) The examiners found one violation of § 38.2-2212 F of the Code of Virginia. The company failed to obtain a written request from the insured to cancel his policy.
- (3) The examiners found one occurrence where the company failed to comply with the provisions of the insurance policy. The company failed to use the cancellation date requested by the insured.

Company-Initiated Non-renewals – Automobile Policies

The Bureau reviewed eight automobile non-renewals that were initiated by the company.

The examiners found one violation of § 38.2-2208 B of the Code of Virginia. The company failed to obtain valid proof of mailing the refusal to renew notice to the lienholder.

Company-Initiated Cancellations – Homeowners Policies

NOTICE MAILED PRIOR TO THE 90TH DAY OF COVERAGE

The examiners reviewed six homeowner cancellations that were initiated by the companies where the notices were mailed prior to the 90th day of coverage in the initial policy period. As a result of this review, the examiners found no overcharges and no undercharges.

The examiners found three violations of § 38.2-2113 C of the Code of Virginia.

- a. In two instances, the company failed to provide proper notice of cancellation to the lienholder.
- b. In one instance, the company failed to obtain valid proof of mailing the notice of cancellation to the lienholder.

NOTICE MAILED AFTER THE 89TH DAY OF COVERAGE

The examiners reviewed seven homeowner cancellations that were initiated by the companies where the notices were mailed on or after the 90th day of coverage in the initial policy period or at any time during the term of a subsequent renewal policy. As a result of this review, the examiners found no overcharges and no undercharges.

- (1) The examiners found one violation of § 38.2-2113 A of the Code of Virginia.
The company failed to obtain valid proof of mailing the cancellation notice to the insured.
- (2) The examiners found one violation of § 38.2-2113 C of the Code of Virginia.
The company failed to retain valid proof of mailing the cancellation notice to the lienholder.
- (3) The examiners found five violations of § 38.2-2114 A of the Code of Virginia.
 - a. In four instances, the company cancelled a policy insuring an owner-occupied dwelling after the 89th day of coverage for a reason not permitted by the statute.
 - b. In one instance, the company cancelled a policy insuring an owner-occupied dwelling after the 89th day of coverage due to a physical change in the structure without proper documentation of the change.
- (4) The examiners found one violation of § 38.2-2114 C of the Code of Virginia.
The company failed to provide 30 days' notice to the insured when the company cancelled the policy after the 89th day of coverage.
- (5) The examiners found three occurrences where the company failed to comply with the provisions of the insurance contract. The company failed to provide proper

notice of cancellation to the lienholder.

All Other Cancellations – Homeowners Policies

NONPAYMENT OF THE PREMIUM

The examiners reviewed 16 homeowner cancellations that were initiated by the companies for nonpayment of the policy premium. As a result of this review, the examiners found no overcharges and no undercharges.

- (1) The examiners found one violation of § 38.2-1318 of the Code of Virginia. The company failed to provide convenient access to files, documents, and records relating to the examination. The company failed to provide the insured's cancellation documentation.
- (2) The examiners found two violations of § 38.2-2113 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the insured.
- (3) The examiners found two violations of § 38.2-2113 C of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the lienholder.
- (4) The examiners found seven occurrences where the company failed to comply with the provisions of the insurance contract. The company failed to provide proper notice of cancellation to the lienholder.

REQUESTED BY THE INSURED

The examiners reviewed six homeowner cancellations that were initiated by the insured where the cancellation was to be effective during the policy term. As a result of this review, the examiners found no overcharges and no undercharges

The examiners found no violations in this area.

Company-Initiated Non-renewals – Homeowners Policies

The examiners reviewed eight homeowner non-renewals that were initiated by the company.

- (1) The examiners found six violations of § 38.2-2113 C of the Code of Virginia. The company failed to provide proper notice of nonrenewal to the lienholder.
- (2) The examiners found one violation of § 38.2-2114 I of the Code of Virginia. The company non-renewed a policy for a reason not permitted by the statute.

CLAIMS REVIEW**Private Passenger Automobile Claims**

The examiners reviewed 99 automobile claims for the period of September 1, 2014 through August 31, 2015. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. As a result of this review, the examiners found overpayments totaling \$1.00 and underpayments totaling \$6,243.11. The net amount that should be paid to claimants is \$6,242.11 plus six percent (6%) simple interest.

- (1) The examiners found 13 violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

These findings occurred with such frequency as to indicate a general business practice.

- (2) The examiners found ten violations of 14 VAC 5-400-40 A. The company obscured or concealed from a first party claimant, directly or by omission, benefits, coverages, or other provisions of an insurance policy that were pertinent to the claim.

- a. In two instances, the company failed to accurately inform an insured of his

Medical Expense Benefits coverage when the file indicated the coverage was applicable to the loss.

- b. In one instance, the company failed to accurately inform an insured of his Transportation Expenses coverage when the file indicated the coverage was applicable to the loss.
- c. In seven instances, the company failed to accurately inform an insured of his benefits or coverages, including rental benefits, available under the Uninsured Motorist Property Damage coverage (UMPD) and/or Underinsured Motorist coverage (UIM) when the file indicated the coverage applied to the loss.

These findings occurred with such frequency as to indicate a general business practice.

- (3) The examiners found three violations of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within ten working days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.
- (4) The examiners found two violations of 14 VAC 5-400-70 A. The company failed to deny a claim or part of a claim, in writing, and/or failed to keep a copy of the written denial in the claim file.
- (5) The examiners found 14 violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim in accordance with the insured's policy provisions.
 - a. In three instances, the company failed to pay the insured's UMPD claim properly when Collision and UMPD coverages applied to the claim.

- b. In one instance, the company failed to pay the insured's rental benefits, available under the UMPD coverage.
- c. In four instances, the company failed to pay the proper sales and use tax, title fee, and/or license fee on first party total loss settlements.
- d. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Medical Expense Benefits coverage.
- e. In three instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.

These findings occurred with such frequency as to indicate a general business practice.

- (6) The examiners found seven violations of 14 VAC 5-400-80 D. The company failed to provide the vehicle owner a copy of the estimate for the cost of repairs prepared by or on behalf of the company.
- a. In five instances, the company failed to provide a copy of the estimate to the insured.
 - b. In two instances, the company failed to provide a copy of the estimate to the claimant.

These findings occurred with such frequency as to indicate a general business practice.

- (7) The examiners found two violations of § 38.2-236 A of the Code of Virginia. The company failed to notify the claimant within five days when the company issued a settlement payment of \$5,000.00 or greater to the claimant's attorney or other representative.

- (8) The examiners found one violation of § 38.2-510 A 1 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions relating to the coverage at issue.
- (9) The examiners found one violation of § 38.2-510 A 3 of the Code of Virginia. The company failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (10) The examiners found five violations of § 38.2-510 A 6 of the Code of Virginia. The company failed to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.
- (11) The examiners found three violations of § 38.2-510 A 10 of the Code of Virginia. The company made a claim payment to the insured that was not accompanied by a statement setting forth the correct coverage under which payment was made.
- (12) The examiners found 11 violations of § 38.2-510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the vehicle owner on the estimate of repairs or in a separate document.
- a. In five instances, the company failed to disclose the required aftermarket parts notice to the insured owner on the estimate of repairs or in a separate document.
 - b. In six instances, the company failed to disclose the required aftermarket parts notice to the claimant owner on the estimate of repairs or in a separate document.

These findings occurred with such frequency as to indicate a general business practice.

- (13) The examiners found two violations of § 38.2-2201 B of the Code of Virginia. The company failed to obtain a statement from an insured authorizing the company to

make payments directly to the medical provider.

- (14) The examiners found three violations of § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle as required by statute. The company attempted to exclude a driver contrary to the statute.
- (15) The examiners found nine occurrences where the company failed to comply with the provisions of the insurance policy.
- a. In one instance, the company requested the insured obtain a copy of a police report when the report should have been obtained by the company.
 - b. In two instances, the company failed to include the lienholder on the check.
 - c. In one instance, the company paid an insured more than the insured was entitled to receive under the terms of his policy.
 - d. In five instances, the company issued payments under the incorrect coverage.

Homeowners Claims

The examiners reviewed 77 homeowner claims for the period of September 1, 2014 through August 31, 2015. The findings below appear to be contrary to the standards set forth by Virginia insurance statutes and regulations. As a result of this review, the examiners found overpayments totaling \$44.07 and underpayments totaling \$7,356.27. The net amount that should be paid to claimants is \$7,356.27 plus six percent (6%) simple interest.

- (1) The examiners found eight violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

These findings occurred with such frequency as to indicate a general business practice.

- (2) The examiners found one violation of 14 VAC 5-400-40 A. The company obscured or concealed from a first party claimant, directly or by omission, benefits, coverages, or other provisions of an insurance contract that were pertinent to the claim. The company failed to inform the insured of the replacement cost benefits under the personal property coverage of the policy.
- (3) The examiners found four violations of 14 VAC 5-400 70 A. The company failed to deny a claim or part of a claim, in writing, and/or failed to keep a copy of the written denial in the claim file.
- (4) The examiners found eight violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim.
 - a. In five instances, the company failed to pay the entire claim under the insured's Dwelling Replacement Cost coverage.
 - b. In one instance, the company failed to pay the entire claim under the Personal Property Actual Cash Value (ACV) coverage.
 - c. In one instance, the company failed to pay the entire claim under the insured's Additional Living Expense coverage.
 - d. In one instance, the company failed to pay the entire claim under the insured's Additional Coverages.

These findings occurred with such frequency as to indicate a general business practice.

- (5) The examiners found six violations of § 38.2-510 A 1 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions relating to

the coverage at issue.

- a. In two instances, the company failed to properly represent coverage under the policy for mold remediation.
- b. In four instances, the company failed to properly represent the replacement cost provisions of the policy.

These findings occurred with such frequency as to indicate a general business practice.

- (6) The examiners found one violation of § 38.2-510 A 3 of the Code of Virginia. The company failed to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (7) The examiners found one violation of § 38.2-510 A 6 of the Code of Virginia. The company failed to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.
- (8) The examiners found four violations of § 38.2-510 A 10 of the Code of Virginia. The company made a claim payment to the insured or beneficiary that was not accompanied by a statement setting forth the correct coverage(s) under which the payment was made.
- (9) The examiners found ten occurrences where the company failed to comply with the provisions of the insurance contract.
 - a. In one instance, the company failed to include all named insureds on the claim payment.
 - b. In eight instances, the company included the lienholder on the check when the lienholder was not applicable to the loss.
 - c. In one instance, the company paid an insured more than he/she was entitled to receive under the terms of his/her policy.

REVIEW OF FORMS

The examiners reviewed the companies' policy forms and endorsements used during the examination period and those that are currently used for all of the lines of business examined. From this review, the examiners verified the companies' compliance with Virginia insurance statutes and regulations.

To obtain copies of the policy forms and endorsements used during the examination period for each line of business listed below, the Bureau requested copies from the companies. In addition, the Bureau requested copies of new and renewal business policy mailings that the companies were processing at the time of the Examination Data Call. The details of these policies are set forth in the Review of the Policy Issuance Process section of the Report. The examiners then reviewed the forms used on these policies to verify the companies' current practices.

Automobile Policy Forms**POLICY FORMS USED DURING THE EXAMINATION PERIOD**

The companies provided copies of 31 forms that were used and/or available for use during the examination period to provide coverage on policies insuring risks located in Virginia.

- (1) The examiners found one violation of § 38.2-2214 of the Code of Virginia. The company did not have available for use the rate classification statement.
- (2) The examiners found four violations of § 38.2-2220 of the Code of Virginia. The company used a version of a standard automobile form that was not in the precise language filed and adopted for use by the Bureau.
- (3) The examiners found two violations of § 38.2-2223 of the Code of Virginia.
 - a. In one instance, the company used a broader version of a standard form that was not filed with the Bureau prior to use.

- b. In one instance, the company filed and received approval of a broadening of the standard forms but failed to use the form in accordance with the approved filing.

OTHER FORMS USED DURING THE EXAMINATION PERIOD

The examiners found no additional forms to review.

POLICY FORMS CURRENTLY USED

The companies provided copies of two forms that were currently used and/or available for use to provide coverage on policies insuring risks located in Virginia.

The examiners found no violations in this area.

Homeowners Policy Forms

The companies provided copies of 36 forms that were used during the examination period to provide coverage on policies insuring risks located in Virginia.

POLICY FORMS USED DURING THE EXAMINATION PERIOD

The examiners found no violations in this area.

POLICY FORMS CURRENTLY USED

The companies provided copies of two forms that were currently used and/or available for use to provide coverage on policies insuring risks located in Virginia.

The examiners found no violations in this area.

REVIEW OF THE POLICY ISSUANCE PROCESS

To obtain sample policies to review the companies' policy issuance process for the lines examined, the examiners requested new and renewal business policy mailings that were sent after the companies received the Examination Data Call. The companies were instructed to provide duplicates of the entire packet that was provided to the insured. The details of these policies are set forth below.

For this review, the examiners verified that the companies enclosed and listed all

of the applicable policy forms on the declarations page. In addition, the examiners verified that all required notices were enclosed with each policy. Finally, the examiners verified that the coverages on the new business policies were the same as those requested on the applications for those policies.

Automobile Policies

The companies provided three new business policies mailed on February 10, 2016. In addition, the companies provided three renewal business policies mailed on March 15, 2016.

NEW BUSINESS POLICIES

The examiners found no violations in this area.

RENEWAL BUSINESS POLICIES

The examiners found no violations in this area.

Homeowners Policies

The companies provided three new business policies mailed on February 10, 2016. In addition, the companies provided three renewal business policies mailed on February 10, 2016.

NEW BUSINESS POLICIES

The examiners found three violations of § 38.2-305 B of the Code of Virginia. The company failed to provide the “Important Information Regarding Your Insurance” notice.

RENEWAL BUSINESS POLICIES

- (1) The examiners found three violations of § 38.2-305 B of the Code of Virginia. The company failed to provide the “Important Information Regarding Your Insurance” notice.

- (2) The examiners found one violation of § 38.2-2120 of the Code of Virginia. The company failed to provide the notice offering the insured the option of purchasing coverage caused by water that backs up through sewers or drains.
- (3) The examiners found three violations of § 38.2-2125 of the Code of Virginia. The company failed to provide the notice advising the insured that the policy does not include loss due to Flood.
- (4) The examiners found three violations of § 38.2-2129 of the Code of Virginia. The company failed to provide the notice advising the insured that the policy does not include loss due to Earthquake.

REVIEW OF STATUTORY NOTICES

The examiners reviewed the companies' statutory notices used during the examination period and those that are currently used for the lines of business examined. From this review, the examiners verified the companies' compliance with Virginia insurance statutes and regulations.

To obtain copies of the statutory notices used during the examination period for the lines of business listed below, the Bureau requested copies from the companies. For the forms currently used, the Bureau used the same new and renewal business policy mailings that were previously described in the Review of the Policy Issuance Process section of the Report.

The examiners verified that the notices used by the companies on all applications, on all policies, and those special notices used for property policies issued on risks located in Virginia complied with the Code of Virginia. The examiners also reviewed documents that were created by the companies but were not required by the Code of Virginia. These documents are addressed in the Other Notices category below.

General Statutory Notices

The examiners found no violations in this area.

Statutory Vehicle Notices

The examiners found no violations in this area.

Statutory Property Notices

The examiners found no violations in this area.

Other Notices

The examiners found one violation of § 38.2-502 1 of the Code of Virginia. The company included information on its application that misrepresented the application of fees.

LICENSING AND APPOINTMENT REVIEW

A review was made of the private passenger automobile and homeowner new business policies to verify that the agent of record for those policies reviewed was licensed and appointed to write business for the companies as required by the statute. In addition, the agent or agency to which each company paid commission for these new business policies was checked to verify that the entity held a valid Virginia license and was appointed by the companies.

Agent

- 1) The examiners found nine violations of § 38.2-1822 A of the Code of Virginia. The company permitted a person to act in the capacity of an agent who was not licensed in Virginia.
- (2) The examiners found 25 violations of § 38.2-1833 of the Code of Virginia. The company failed to appoint an agent within 30 days of the date of the application.

Agency

The examiners found two violations of § 38.2-1812 of the Code of Virginia. The company failed to appoint an agency within 30 days of the date of application.

REVIEW OF THE COMPLAINT-HANDLING PROCESS

A review was made of the companies' complaint handling procedures and record of complaints to verify compliance with § 38.2-511 of the Code of Virginia.

The examiners found no violations in this area.

REVIEW OF PRIVACY AND INFORMATION SECURITY PROCEDURES

The Bureau requested a copy of the companies' Information Security Program that protects the privacy of policyholder information in accordance with § 38.2-613.2 of the Code of Virginia.

The companies provided their Information Security Procedures.

PART TWO – CORRECTIVE ACTION PLAN

Business practices and the error tolerance guidelines are determined in accordance with the guidelines contained in the NAIC Market Regulation Handbook. A seven percent (7%) error criterion was applied to claims handling. Any error ratio above this threshold for claims indicates a general business practice. In some instances, such as filing requirements, forms, notices, and agent licensing, the Bureau applies a zero-tolerance standard. This section identifies the violations that were found to be business practices of Virginia insurance statutes and regulations.

General

Mercury Casualty Company and
American Mercury Insurance Company shall:

Provide a Corrective Action Plan (CAP) with their response to the Report.

Rating and Underwriting Review

Mercury Casualty Company and
American Mercury Insurance Company shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as of the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.
- (3) Complete and submit to the Bureau the enclosed file titled "Rating Overcharges Cited during the Examination." By returning the completed file to the Bureau, the company acknowledges that it has refunded or credited the overcharges listed in the file.
- (4) Properly represent the benefits, coverages, advantages, and conditions of the policy by listing forms and discounts applicable to the policy on the declarations

page.

- (5) File with the Commission all rates and supplementary rate information, including fees.
- (6) Use the rules and rates on file with the Bureau. Particular attention should be given to the use of filed discounts, surcharges, points for accidents and convictions, symbols, territories, tier eligibility, increased limits factors, base and/or final rates, filed fees, construction type and public protection class.
- (7) Provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle as required by the statute.
- (8) Update the insured's credit information at least once in a three-year period.

Termination Review

Mercury Casualty Company and
American Mercury Insurance Company shall:

- (1) Correct the errors that caused the overcharges and undercharges and send refunds to the insureds or credit the insureds' accounts the amount of the overcharge as the date the error first occurred.
- (2) Include six percent (6%) simple interest in the amount refunded and/or credited to the insureds' accounts.
- (3) Complete and submit to the Bureau the enclosed file titled "Termination Overcharges Cited During the Examination." By returning the completed file to the Bureau, the company acknowledges that it has refunded or credited the overcharges listed in the file.
- (4) Calculate return premium according to the filed rules and policy provisions.
- (5) Obtain and retain valid proof of mailing the cancellation notice to the insured and lienholder.
- (6) Send the cancellation notice for an owner-occupied dwelling policy at least 30 days

before the effective date of cancellation when it is mailed after the 89th day of coverage.

- (7) Send the cancellation notice at least 45 days before the effective date of cancellation when the notice on a private passenger automobile policy is mailed after the 59th day of coverage.
- (8) Provide proper notice of cancellation or refusal to renew to the insured and lienholder.

Claims Review

Mercury Casualty Company and
American Mercury Insurance Company shall:

- (1) Correct the errors that caused the underpayments and overpayments, and send the amount of the underpayment to insureds and claimants.
- (2) Include six percent (6%) simple interest in the amount paid to the insureds and claimants.
- (3) Complete and submit to the Bureau the enclosed file titled "Claims Underpayments Cited During the Examination." By returning the completed file to the Bureau, the companies acknowledge that they have paid the underpayments listed in the file.
- (4) Document claim files so that all events and dates pertinent to the claim can be reconstructed.
- (5) Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be given to deductibles, rental benefits under UMPD and Transportation Expenses coverage, and Medical Expense coverage.
- (6) Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim, and pay the claim in accordance with the insured's policy

- provisions.
- (7) Provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants.
 - (8) Properly represent pertinent facts or insurance provisions relating to coverages at issue.
 - (9) Disclose the required aftermarket parts notice to the vehicle owner on the estimate of repair or in a separate document.
 - (10) Based on the Bureau's examination of the Company's Uninsured Motorist claims, the Company should conduct an internal audit of the Uninsured Motorist claims where the deductible was applied incorrectly when the at-fault party was identified. The company should then prepare an excel spreadsheet indicating the payments made as a result of the internal audit. The spreadsheet should be in the same format as the Restitution Spreadsheet sent by the Bureau for the Claims Underpayments.

Forms Review

Mercury Casualty Company and
American Mercury Insurance Company shall:

- (1) Develop a rate classification statement to comply with § 38.2-2214 of the Code of Virginia.
- (2) Use the automobile standard forms in the precise language as filed and approved by the Bureau.
- (3) Use the forms filed as broadenings to the automobile standard forms in the precise language filed and approved by the Bureau.
- (4) File all broadenings to standard forms prior to use.

Review of Policy Issuance Process

Mercury Casualty Company and
American Mercury Insurance Company shall:

- (1) Provide the insured the “Important Information Regarding Your Insurance” notice with all new homeowner policies.
- (2) Provide the notice offering the insured the option of purchasing coverage caused by water that backs up through sewers and drains.
- (3) Provide the Flood Exclusion notice.
- (4) Provide the Earthquake Exclusion notice.

Review of Statutory Notices

Mercury Casualty Company and
American Mercury Insurance Company shall:

Amend the application to properly represent applicable fees.

Licensing and Appointment Review

- (1) Appoint agents within 30 days of the application.
- (2) Pay commissions only to agencies that are appointed by the company.
- (3) Accept business only from agents and agencies that have a current license from the Commonwealth of Virginia.

PART THREE – RECOMMENDATIONS

The companies should carefully scrutinize the following errors and correct the causes before these errors become business practices. The following errors will not be included in the settlement offer:

Rating and Underwriting

- The companies should amend Rule Number P26 Credit Tier to include the numerical coding that corresponds to the various “No Hit” and “Thin File” Credit Determinations.
- American Mercury Insurance Company should amend its Driving Record Points Rule D3 to clarify that accidents appearing on the MVR and application cannot be deemed at-fault automatically without first determining if the driver was wholly or partially at fault.
- American Mercury Insurance Company should amend its Homeowner and Mobile Home discount rules (P23 and P37) to specify when proof of ownership is required instead of stating the company “may” verify.

Termination

- The companies should properly code terminations in the correct category. Special attention should be paid to homeowner non-pay cancellations, cancellations before and after the 89th day of coverage, auto non-pay cancellations, and cancellations before and after the 59th day of coverage.
- The companies should cease providing the Right to Review by the Commissioner language in their cancellations notices mailed within the first 59 days of a new business private passenger automobile policy as this right is not provided by the Code of Virginia.
- The companies should cancel a policy insuring an owner-occupied dwelling when the notice is mailed after the 89th day of coverage only for those reasons permitted by statute.
- The companies should cancel motor vehicle policies when the notice is mailed after the 59th day of coverage only for the reasons permitted by the statute.

The companies should obtain advance written notice when the insured requests cancellation of the policy.

Claims

- The companies should acknowledge correspondence that reasonably suggests a reply is expected from insureds and claimants within ten business days.
- The companies should make all claim denials in writing.
- The companies should provide a reasonable explanation of the basis for the denial in its written denial of the claim.
- The companies should notify the claimant within five business days when a settlement check of \$5000.00 or greater is sent to the claimant's attorney or representative.
- The companies should adopt and implement reasonable standards for the prompt investigation of claims.
- The companies should make a prompt, fair, and equitable settlement of a claim in which liability is reasonably clear.
- The companies should obtain an Assignment of Benefits from the insured prior to making payments directly to the medical provider.
- The companies should not make payments to the insured for amounts more than he/she is entitled to receive under the terms of the policy.
- The companies should include the lienholder on payments when applicable.
- The companies should make claim payments under the correct coverage.

Forms

- The companies should add the following wording in the Virginia Suspension of Insurance form PP 02 01 05: "This endorsement must be attached to the Change Endorsement when issued after the policy is written."
- The companies should correct the wording in the Auto Loan/Lease coverage form PP 03 05 09 93 from the word "show" to the word "shown."
- The companies should correct Medical Expense and Income Loss Benefits

Coverage form PP 05 96 01 05 to read: "Any other person who sustains "bodily injury" while "occupying."

- The companies should add the following wording in the Trust Endorsement form PP13 03 01 05 to include: "Part F is amended as follows:"
- The companies should correct the wording in Coverage for Damage to Your Auto (Maximum Limit of Liability) form PP 13 58 01 05 from the words "show" to "shown" and "an" to "any."

SUMMARY OF PREVIOUS EXAMINATION FINDINGS

The Bureau conducted two prior market conduct examinations of Mercury Casualty Company.

During the private passenger auto examination of Mercury Casualty Company as of June 30, 2006, the company violated §§ 38.2-502, 38.2-510 A, 38.2-512, 38.2-1905 A, 1906 A, 38.2-1906 D, 38.2-2202, 38.2-2204, 38.2-2210, 38.2-2212, 38.2-2214, 38.2-2220, 38.2-2223, and 38.2-2234 of the Code of Virginia as well as 14 VAC 5-400-40 A, 14 VAC 5-400-70 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D of the Virginia Administrative Code.

During the private passenger auto examination of Mercury Casualty Company as of August 31, 2009, the company violated §§ 38.2.305 A, 38.2-502, 38.2-511, 38.2-604 A, 38.2-604 B, 38.2-604 C, 38.2-604.1 A, 38.2-604.1 B, 38.2-610 A, 38.2-1812, 38.2-1833, 38.2-1906 D, 38.2-2204, 38.2-2206, 38.2-2208 A, 38.2-2208 B, 38.2-2210 A, 38.2-2212 D, and 38.2-2212 E of the Code of Virginia; and 14 VAC 5-400-40 A of the Virginia Administrative Code.

ACKNOWLEDGEMENT

The Bureau acknowledges the officers and employees' responses to requests from the Bureau during the course of the examination.

Sincerely,

A handwritten signature in cursive script that reads "Karen S Gerber".

Karen S. Gerber
Senior Insurance Market Examiner

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



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www.scc.virginia.gov/boi

January 24, 2017

VIA UPS 2nd DAY DELIVERY

Laura Wade
Mercury Casualty Company
685 US Highway 202-206, Suite 301
Bridgewater, NJ 08807

**RE: Market Conduct Examination
American Mercury Insurance Company NAIC# 16810
Mercury Casualty Company NAIC# 11908
Examination Period: September 1, 2014 – August 31, 2015**

Dear Ms. Wade:

The Bureau of Insurance (Bureau) has conducted a market conduct examination of the above referenced companies for the period of September 1, 2014, through August 31, 2015. The preliminary examination report (Report) has been drafted for the company's review.

Enclosed with this letter is a copy of the Report and copies of review sheets that have been added, withdrawn or revised since December 20, 2016. Also enclosed are several technical reports that will provide you with the specific file references for the violations listed in the Report.

Since there appears to have been a number of violations of Virginia insurance laws on the part of the company, I would urge you to closely review the Report. Please provide a written response. The company does not need to respond to any particular item with which it agrees. If the company disagrees with an item or wishes to further comment on an item, please do so in Part One of the Report. Please be aware that the examiners are unable to remove an item from the Report or modify a violation unless the company provides written documentation to support its position.

When the company responds to the Report, please do not include any personal identifiable or privileged information (names, policy numbers, claim numbers, addresses). If the company needs to reference any of this information please use exhibits or appendices. In addition, please use the same format (headings and numbering) as found in the Report. If the response includes any of the aforementioned information or does not follow the format of the

Report, the response will be returned to the company to be rewritten in the correct order. By adhering to this process, it will be much easier to track the responses against the Report.

Secondly, the company must provide a corrective action plan that addresses all of the issues identified in the Corrective Action Plan section of the Report, again using the same headings and numberings as are used in the Report.

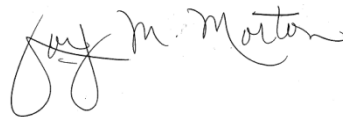
Thirdly, if the company has comments it wishes to make regarding Part Three of the Report, please use the same headings and numbering for the comments. In particular, if the examiners identified issues that were numerous but did not rise to the level of a business practice, the company should outline the actions it is taking to prevent those issues from becoming a business practice.

Finally, we have enclosed an Excel file that the company must complete and return to the Bureau with the company's response. This file lists the review items for which the examiners identified overcharges (rating and terminations) and underpayments (claims).

The company's response and the spreadsheet mentioned above must be returned to the Bureau by March 1, 2017.

After the Bureau has received and reviewed the company's response, we will make any justified revisions to the Report. The Bureau will then be in a position to determine the appropriate disposition of the market conduct examination.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large, looped initial "J".

Joy Morton
Manager
Market Conduct Section
Property & Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov



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jbmiller@mercuryinsurance.com

March 31, 2017

VIA EMAIL & U.S. MAIL

Joy Morton
Manager, Market Conduct Section
Property & Casualty Division
State Bureau of Insurance
P.O. Box 1157
Richmond, VA 23218

joy.morton@scc.virginia.gov

RE: Response to Preliminary Examination Report (9/01/2014-8/31/2015)
Mercury Casualty Company (NAIC #11908)
American Mercury Insurance Company (NAIC #16810)

Dear Ms. Morton:

Thank you for the above-referenced preliminary examination report (the "Report"). Although the cover letter attached to the Report requested a response by March 1, 2017, we appreciate your agreement to extend the response date to March 31, 2017. As requested, we have carefully reviewed the Report, and we are providing the following documents as our written response:

1. A narrative response addressing the observations in Part One of the Report, which identifies those findings the Company disputes, and why.
2. An Excel file containing the Company's Corrective Action Plan, using the headings (one tab for each heading) and numbering contained in Part Two of the Report.
3. An Excel file addressing the overcharges and underpayments identified by examiners.

As noted in our narrative response, many of the observations contained in the Report were addressed by Company staff during the examination, at which time various items in the files, apparently overlooked by examiners, were brought to their attention, or additional documentation or explanations were provided. In a substantial number of those cases, Company staff believed the issues were resolved, either because they were issues of fact that were easily addressed, or because examiners indicated that the explanation provided was sufficient. So while the narrative response offers further explanation, all supporting documentation has already been provided to examiners, and no additional documents are provided with this response.



Joy Morton, Virginia Bureau of Insurance
RE: Preliminary Market Conduct Examination Report
March 31, 2017
Page 2 of 2

We have completed the Bureau's Excel spreadsheet for overcharges and undercharges, but please note that the Company does not agree with all of those items. The enclosed spreadsheet indicates which transactions have been or will be completed, and provides alternative calculations or explanations for those items where the Company differs from the conclusions of the examiners.

Throughout these response documents, the following terms refer to our two above-captioned insurers licensed in the Commonwealth that were the subject of this examination: the Company (with or without the initial capital), Mercury, the Mercury Companies, we, us or our.

Please let me know if you have any questions about the foregoing, or if anything further is needed. Thanks for your assistance with this Examination.

Sincerely,
MERCURY CASUALTY COMPANY
AMERICAN MERCURY INSURANCE COMPANY

A handwritten signature in black ink, appearing to read "Joseph B. Miller".

Joseph B. Miller
Attorney for the Company

JBM/tw

MARKET CONDUCT EXAMINATION

September 1, 2014 – August 31, 2015

COMPANY'S WRITTEN RESPONSE

TO

PRELIMINARY EXAMINATION REPORT

American Mercury Insurance Company
and
Mercury Casualty Company

685 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807
(908) 243-1800

Rating And Underwriting Review

Automobile New Business Policies

(1) The examiners found one violation of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured with a written notice Adverse Underwriting Decision (AUD) Notice.

The Company does not dispute this finding. This occurred in our previous software and is no longer occurring today, so no corrective action is needed.

(2) The examiners found two violations of § 38.2-1906 A of the Code of Virginia. The company failed to file with the commission all rates and supplementary rate information including fees.

The Company does not dispute this finding. Our filing table was written with 4 vehicles when it should have said 4+ vehicles. This was corrected in a subsequent filing, and no corrective action is needed.

(3) The examiners found two violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

a. In 28 instances, the company failed to use the correct discounts and/or surcharges.

RPA005	RPA006	RPA011	RPA019	RPA028
RPA033	RPA039	RPA41	RPA53	RPA54
RPA57	RPA59	RPA62	RPA64	RPA66
RPA67	RPA08	RPA26		

For the 18 above-referenced files, the Company does not dispute this finding. Our filing table was cut off and did not include the 3-year and 5-year discounts for tiers B1-E1. This was corrected in a subsequent filing prior to this examination, and no corrective action is needed.

RPA036	RPA040	RPA055	RPA058	RPA048
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For the five above-referenced files, the Company does not dispute this finding. Our rules filing indicated a surcharge for Financial Responsibility filings, however our rate filing did not specify the specific coverages the surcharge was applicable to. This was corrected in a subsequent filing prior to this examination, and no corrective action is needed.

RPA050: The Company respectfully disagrees with the examiners' observations. The company received conflicting information from the insured. The information indicated that the vehicle was purchased new and that the purchase date was substantially in the past. The company reconciled this ambiguity in favor of the insured and allowed the discount to remain. The company asserts that its action is reasonable given that the discount in question is 1-2% of

vehicle premium and that requiring the insured to provide supporting documentation would be cost prohibitive. There is no statutory provision that requires insurers to verify every discount on every policy, and we believe the company took reasonable efforts in this case. However, prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this from occurring in the future. No further corrective action is needed.

RPA023: The Company respectfully disagrees with the examiners' observations. The policy was given the correct rate. The Bureau's finding was based on a note made by an underwriter that the prior policy inception date was 2/20/2013. The policy with Mercury started on 12/10/2014. The policy was rated with a prior insurance length of 12-17 months. Based on the underwriting note, the actual length of prior insurance falls into the 18-23 month category. The 12-17 month and 18-23 month categories for length of prior insurance have the same rate.

RPA008: The Company respectfully disagrees with the examiners' observations. This policy application was received with the Mature Driver Discount applied and with an effective date of 10/06/2014. On 10/13/2014 the company requested documentation to support the Mature Driver Discount. On 11/03/2014 the policy was set for cancellation with a cancellation effective date of 11/15/2014. On 11/4/2014 the company received supporting documentation for the Mature Driver Discount indicating the course was taken on 4/30/2011, over three years from the inception date of the policy and not meeting the requirements for the Mature Driver discount. However by the time the company received notification that the insured did not qualify for the discount the cancellation notice had already been issued and mailed to the insured.

b. In five instances, the company failed to apply the correct surcharge points for accidents and/or convictions.

The Company does not dispute this finding with respect to the following files:

RPA038 RPA055

Prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this from occurring in the future.

As discussed below, the Company respectfully disagrees with the examiners' observations on the following files:

RPA045: The insured disclosed a violation that occurred on 1/10/2013. The Bureau indicates that since there was no conviction date shown the company cannot surcharge. In this case the violation was disclosed by the insured. The company is entitled to rely on information expressly provided by the insured.

RPA059 – two violations listed:

- 1) The Bureau indicates that the Company charged for a 10/19/2014 accident that should not have been charged. The 10/19/2014 accident was shown on

CLUE with a vehicle operator [REDACTED] with a birthdate of [REDACTED]. This accident was listed on the application for insurance which was agreed to by the insured when he signed it. However on the application [REDACTED] date of birth was incorrectly entered [REDACTED]. The Bureau indicates that the company should not have charged for the accident since the date of birth shown on the application was different than what was shown in CLUE. The company asserts that the correct date of birth for [REDACTED] is [REDACTED]. [REDACTED] date of birth was corrected in the company system when the policy was issued. Further, the insured agreed in the application that the 10/19/2014 accident belonged to driver 2, [REDACTED].

2) No dispute.

c. In seven instances, the company failed to use the correct symbol and/or model year factor.

The Company does not dispute this finding. The updated VIN pages were not included in the filing. The VIN pages were included with a subsequent filing prior to this examination, so no further corrective action is needed.

d. In eight instances the company failed to use the correct tier eligibility criteria.

RPA009 RPA010 RPA021 RPA023 RPA024
RPA038 RPA057

With respect to the seven above-referenced files, the application in use at the time of the examination recorded the length of prior insurance in the “underwriting tier” using a numeric code. The Company maintains that these policies were rated based on information disclosed by the agent/insured during the application process and entered into the company’s computer system. However the application for insurance did not clearly record the limits or length of time with the current/previous insurance carrier. Prior to this examination the company updated the application for insurance and it now reflects this information. The company maintains that the above-referenced files were rated correctly, and no violations occurred, but in any event no further corrective action is needed.

RPA026: For this file, the Company does not dispute the examiners’ findings. The company corrected this issue in subsequent filings, and no further corrective action is needed.

e. In 12 instances, the company failed to use the correct base and/or final rates.

RPA006 RPA008 RPA023 RPA034 RPA044
RPA074

For the six above-referenced files, the company respectfully disagrees with the examiners’ observations. The company received conflicting information from the insured. The

information indicated that the vehicle was purchased new and that the purchase date was substantially in the past. The company interpreted this ambiguous information in favor of the insured and allowed the discount to remain. The company asserts that its action is reasonable given that the discount in question is 1-2% of vehicle premium and that requiring the insured to provide supporting documentation would be cost prohibitive. The company notes that there is no provision that requires companies to verify every discount on every policy. However, prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this from occurring in the future. No further corrective action is needed.

RPA065: The application was submitted on 7/13/2015 with an effective date of 8/1/2015. The company filed new rates to be effective 7/19/2015, however they were not available in the company's system when this application was submitted. No corrective action is needed.

RPA069: The application was submitted on 7/13/2015 with an effective date of 8/1/2015. The company filed new rates to be effective 7/19/2015, however they were not available in the company's system when this application was submitted. No corrective action is needed.

RPA069 RPA071 RPA072

For the above-referenced files, the company does not dispute the examiners' findings. The company corrected this issue in subsequent filings, and no corrective action is needed.

RPA054: For this file, the company does not dispute the examiners' findings. The UM Limit Factor table in the filing was cut off causing factors for some UM limits not to be shown. This was corrected in a subsequent filing prior to this examination, and no further action is needed.

f. In 13 instances, the company failed to use the correct increased limits factor.

The company does not dispute the examiners' findings. The UM Limit Factor table in the filing was cut off causing factors for some UM limits not to be shown. This was corrected in a subsequent filing prior to this examination, and no further action is needed.

g. In five instances, the company failed to use the filed financial responsibility fee

The Company does not dispute this observation. The Company made a single page update to the filing, making a change to rule D3: Driving Record Points. That rule is directly above rule D4 which included the Financial Responsibility fee. The added text in rule D3 caused a portion of rule D4 to be pushed on to the next page. This filing, MERY-12957791 was not intended to be a change to rule D4. This has been corrected in a subsequent filing prior to this examination, and no further action is needed.

(4) The examiners found 16 violations of 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the Named Insured and any other person using or responsible for the use of the motor vehicle. The company attempted to exclude a driver contrary to the statute.

The company respectfully disagrees with this observation. No policy issued by the company had any individual listed as an excluded driver. There is no provision in the policy contract or any endorsement to exclude a driver from coverage.

The policy declarations during part of the examination period included a section labeled “non-drivers” that has the following statement:

“The persons listed below are not considered in the rating of this policy because such persons DO NOT DRIVE and therefore will not be given permission to drive any of the policy vehicles. The Named Insured will notify the Company when any such persons become licensed or permitted to drive.”

This statement does not indicate that coverage will not be applicable and does not place a limitation on who the Named Insured allows to drive policy vehicles. It does specify that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

The application for insurance as a section on the third page titled “IMPORTANT” that requires the Named Insured to name all persons, except drivers listed on page one, who reside in the household. This section includes the following statement:

“I understand that the person(s) shown below will be listed on my policy but not considered in the rating of my policy because this person(s) DOES NOT DRIVE my vehicle(s) and has not and will not be given permission to drive any of my vehicles. I understand that all persons in my household who operate my vehicles must be rated drivers, and I warrant that this person(s) is not operating any of my vehicles at this time. I agree to notify the Company when any person listed below becomes licensed or permitted to drive. I understand that it is material misrepresentation if I have falsified this information. I further understand that the above statements and declarations are part of my policy and that such statements and declarations materially affect the decision to issue the policy and/or the premium to be charged, and that any such statement or declaration that is untrue may result in the policy being voided and coverage for any claims thereunder denied.”

This statement affirms that the individuals listed in the “IMPORTANT” section are not included in rating because they do not drive policy vehicles. It confirms that the insured does not intend to give permission to a listed individual to drive any policy vehicle and confirms understanding that persons in the household who operate policy vehicles must be listed as rated drivers. This section does not limit who the Named Insured gives permission to operate policy vehicles, it specifies that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

Notwithstanding the statements above, prior to this examination and during the examination period the company has discontinued usage of the application and declarations pages that contain the statements above, and effective 7/19/2015 began using a new application and declarations that do not include the language in question. The company maintains that no violations have occurred, but even if the Bureau disagrees, no further corrective actions are needed.

Automobile Renewal Business Policies

The Bureau reviewed 35 renewal business policy files. As a result of this review, the examiners found overcharges totaling \$904.00 undercharges totaling \$255.00. The net amount that should be refunded to insureds is \$904.00 plus six percent (6%) simple interest.

(1) The examiners found two violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company listed forms on the declarations page that were not applicable to the policy.

The Company respectfully disagrees with this finding. The declarations page on these policies lists an endorsement, PP 05 96 01/2005 that modifies the policy contract regarding Medical Expense and Income Loss Benefits. The insured did not elect to purchase the coverage in question. Given that the endorsement in question modifies a coverage that was not selected by the insured there is no impact on the premium or underwriting of the policy, and no violation occurred. Notwithstanding the statements above, prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

(2) The examiners found one violation of § 38.2-1906 A of the Code of Virginia. The company failed to file with the Commission all rates and supplementary rate information including fees.

Our filing table was written with 4 vehicles when it should have said 4+ vehicles. This was corrected in a subsequent filing, and no further action is needed.

(3) The examiners found 51 violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

a. In 16 instances, the company failed to use the correct discounts and/or surcharges.

RPA086

RPA092

A policy writing system issue caused the above-referenced policies not to be correctly evaluated for tier at renewal. Prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

RPA127 RPA133 RPA139 RPA140

A policy writing system issue caused the above-referenced policies to be rated using the wrong factor. Prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

RPA151 RPA140

A policy writing system issue caused the above-referenced policies to be rated using the anti-theft discount based on the VIN. Prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

RPA096

For the above-referenced policy, the application in use at the time of the examination recorded the length of prior insurance in the “underwriting tier” using a numeric code. The company maintains that these policies were rated based on information disclosed by the agent/insured during the application process and entered into the company’s computer system. However the application for insurance did not clearly record the limits or length of time with the current/previous insurance carrier. Prior to this examination the company updated the application for insurance and it now reflects this information. No further action is needed.

b. In two instances, the company failed to apply the correct surcharge points for accidents and/or convictions.

RPA078: A policy writing system issue caused surcharge points not to correctly apply to the above-referenced policy. Prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

RPA140: With respect to this policy, the company respectfully disagrees. The Bureau indicated that the policy file did not indicate that driver 2, assigned to vehicle 2, had any surchargeable convictions or at-fault accidents. The policy file in fact contains information showing the driver 2 was convicted of Speeding 15-19 MPH on 9-26-2012 and Speeding 15-19 MPH on 4-25-2012. Although already contained in the file, this information, including a copy of the Company’s record of the MVR report received on 2-4-2014 was provided to the Bureau on 9-14-2016 in response to this preliminary observation.

c. In 18 instances, the company failed to use the correct symbol and/or model year.

The Company agrees, and has corrected this issue in subsequent filings. No further action is needed.

d. In one instance, the company failed to use the correct tier eligibility criteria.

The Company respectfully disagrees with this observation. The Bureau indicated that the company should have tiered the policy based on prior limits of 100/300. On 9-14-2016 the Company provided the Bureau with a prior declarations page showing that the insured's prior limits were 25/50. This information was contained in the file but apparently overlooked by examiners. The policy was tiered correctly.

e. In four instances, the company failed to use the correct base and/or final rates.

The Company does not disagree with this observation. Prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

f. In 10 instances, the company failed to use the correct increased-limits factor.

The Company agrees with this observation. The UM Limit Factor table in the filing was cut off, causing factors for some UM limits not to be shown. This was corrected in a subsequent filing prior to this examination, and no further action is needed.

(4) The examiners found two violations of § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle. The company attempted to exclude a driver contrary to the statute.

The company respectfully disagrees. No policy issued by the company had any individual listed as an excluded driver. There is no provision in the policy contract or any endorsement to exclude a driver from coverage.

The policy declarations during part of the examination period included a section labeled "non-drivers" that has the following statement:

"The persons listed below are not considered in the rating of this policy because such persons DO NOT DRIVE and therefore will not be given permission to drive any of the policy vehicles. The Named Insured will notify the Company when any such persons become licensed or permitted to drive."

This statement does not indicate that coverage will not be applicable and does not place a limitation on who the Named Insured allows to drive policy vehicles. It does specify that the

Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

The application for insurance has a section on the third page titled “IMPORTANT” that requires the Named Insured to name all persons, except drivers listed on page one, who reside in the household. This section includes the following statement:

“I understand that the person(s) shown below will be listed on my policy but not considered in the rating of my policy because this person(s) DOES NOT DRIVE my vehicle(s) and has not and will not be given permission to drive any of my vehicles. I understand that all persons in my household who operate my vehicles must be rated drivers, and I warrant that this person(s) is not operating any of my vehicles at this time. I agree to notify the Company when any person listed below becomes licensed or permitted to drive. I understand that it is material misrepresentation if I have falsified this information. I further understand that the above statements and declarations are part of my policy and that such statements and declarations materially affect the decision to issue the policy and/or the premium to be charged, and that any such statement or declaration that is untrue may result in the policy being voided and coverage for any claims thereunder denied.”

This statement affirms that the individuals listed in the “IMPORTANT” section are not included in rating because they do not drive policy vehicles. It confirms that the insured does not intend to give permission to a listed individual to drive any policy vehicle and confirms understanding that in persons in the household who operate policy vehicles must be listed as rated drivers. This section does not limit who the Named Insured gives permission to operate policy vehicles, it specifies that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

Notwithstanding the foregoing discussion, prior to this examination and during the examination period the company has discontinued usage of the application and declarations pages that contain the statements above and effective 7/19/2015 began using a new application and declarations that do not include the language in question. There are no violations in this examination regarding the new application and declarations.

(5) The examiner found one violation of § 38.2-2234 B of the Code of Virginia. The company failed to update credit information at least once in a three year period or when requested by the insured.

The Company agrees. Prior to this examination and during the examination period the company deployed a new policy writing system which corrected this issue. No further action is needed.

Homeowners New Business Policies

(1) The examiners found 2 violations of § 38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company failed to list all forms applicable to the policy on the declaration page.

We acknowledge these errors and are making system adjustments to ensure that all applicable forms are listed on the declaration page.

(2) The examiners found 21 violations of 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company listed discounts on the declarations page that did not apply to the policy.

The Company will remove the discount from the declarations pages.

(3) 90 Violations of 38.2-1906 D.

a. In four instances, the company failed to use the correct discounts and/or surcharges.

This has been corrected, and no further action is needed.

b. In two instances, the company failed to use the correct tier eligibility criteria.

The Company disagrees. The examiners did not calculate the tier correctly. The examiners are using false representations made by an Insured to inaccurately rate the policies. The Bureau suggests that the company use false information to rate policies when there is clear evidence contained within each policy file that directly contradicts the examiners' assertions. The data used by the examiners are entered by the Insured as an attempt to avoid rate. Section 38.2-1906 D does not require the Company to rate policies using clearly fraudulent misrepresentations made by the Insured and the Company argues that the law require the opposite. For example, Section 38.2-1906.1 clearly contemplates insurers conducting underwriting investigations and rating policy correctly, rather than based on incorrect information furnished by the applicant, and insurers are estopped from charging insureds with misrepresentations when the insurer had the opportunity to correct the error but failed to do so. *See, e.g., Standard Life & Acc. Ins. Co. v. Dewberry & Davis, LLC, et al.*, 210 Fed.Appx. 330, 335 (4th Cir. 2006).

c. In 67 instances, the company failed to use the correct base and/or final rates.

The reported errors will be corrected, however the Company does not agree that all are violations. In 19 instances the Bureau did not provide a copy of the specific allegations, so the company is unable to respond. The Company disagrees with the Bureau's findings on the following files, as discussed below:

In eight instances, the Bureau contends that the company must use the inaccurate information an inspector put on the inspection report regarding the year built. Inspectors indicated the incorrect year built but the company verified it on the tax records contained in that

very same inspection referenced by examiners. Examiners were provided with this documentation at that time of the examination. The violations on the following files should be removed:

RHO006	RHO008	RHO0028	RHO030	RHO033	RHO038
RHO047	RHO050				

In 11 instances the examiners did not properly use the filed tables to determine the correct PPRC factor to be used. Examiners were provided with this documentation at that time of the examination. The violations on the following files should be removed:

RHO012	RHO015	RHO022	RHOP028	RHO031	RHO035
RHO041	RHO046	RHO047	RHO048	RHO050	

In 16 instances the examiners did not properly use the filed tables to determine the correct Law and Ordinance factor to be used. Examiners were provided with this documentation at that time of the examination. The violations on the following files should be removed:

RHO012	RHO018	RHO025	RHO029	RHO030	RHO031
RHO035	RHO041	RHO042	RHO043	RHO044	RHO046
RHO047	RHO048	RHO049	RHO050		

In one instance, the Bureau contends that the company must use the inaccurate information an inspector put on the inspection report regarding the roof covering. The inspection indicated an incorrect roof coverage but the company verified the accurate roof covering on the photos in that very same inspection. The examiners therefore are asserting we must use the false information to rate the policy even if that same report indicates otherwise. Examiners were provided with this documentation at that time of the examination. The violation on the following file should be removed: RHO036

In two instances, the Bureau contends that the company must use the inaccurate information the insured indicated on the application in regards to the number of months occupied in the home. The Insured indicated that they reside in the home 12 months out of the year, and examiners are asserting that the company must rate the home as a primary residence. However, in each circumstance the company already insures the Named Insured's primary residence, and thus it is beyond dispute that this is their secondary residence. Examiners were provided with this documentation at that time of the examination. The violations on the following files should be removed: RHO017, RHO037

d. In six instances, the company failed to use the correct construction type.

The Bureau is asking the Company to use factually inaccurate information to rate their policies simply because an inspector selected an incorrect option when completing his/her report. The inspection reports provided to the examiners directly contradict the assertions made here. The inspection reports contain tax record data as well as photos that demonstrate the direct opposite factual information in regards to the homes condition. Insurers have the right and the duty to investigate facts when underwriting risks; Section 38.2-1906 D does not require the

company to use factually inaccurate information provided by a third-party vendor to rate policies. Examiners were provided with this documentation at that time of the examination. The violations on the following files should be removed:

RHO004 RHO005 RHO010 RHO016 RHO022 RHO041

e. In 11 instances, the company failed to use the correct protection class. [Paragraph numbered “d.” in report]

The Company believes it attempted in good faith to comply with this requirement, but agrees that its filings were technically defective. The Company does not disputed this violation, and has corrected this issue.

Homeowners Renewal Business Policies

(1) The examiners found two violations of §38.2-305 A of the Code of Virginia. The company failed to specify accurate information in the policy. The company failed to list all forms applicable to the policy on the declarations page.

We acknowledge these errors and are making system adjustments to ensure that all applicable forms are listed on the declaration page

(2) The examiners found 22 violations of §38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company listed discounts on the declarations page that did not apply to the policy.

The Company does not agree that its printing of a “primetime discount” on declarations pages resulted in any “misrepresentation” in violation of Section 38.2-502, but the Company the will modify its declarations pages in response to the Bureau’s concerns.

(3) The examiners found 99 violations of §38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

There is a variety of allegations made under this heading. The Company agrees in part and disagrees in part. The Company disagrees where the Bureau is asking the Company to use factually inaccurate information to rate their policies. In multiple examples the Bureau advises that an Insured submitted an application stating the home was a primary residence but the Company had rated it as a secondary home. This arises out of the fact that Mercury insured the primary home for the Named Insured and the new application was a secondary residence. The simple fact that a single named insured cannot occupy two residences both as primary residences should be proof enough that one of the applications was a misrepresentation. Section 38.2-1906 D does not require the company to use factually inaccurate information provided by the insured to rate policies. We ask that the violations be removed on the following 11 files:

RHO053	RHO060	RHO073	RHO079	RHO093	RHO095
RHO099	RHO103	RHO105	RHO107	RHO109	

(4) The examiners found 36 violations of §38.2-2126 B of the Code of Virginia. The company failed to update the insured's credit information at least once in a three year period.

The company agrees. We are amending our system to re-order credit appropriately in all cases.

TERMINATION REVIEW

Company-Initiated Cancellations – Automobile Insurance

NOTICED MAILED PRIOR TO THE 60TH DAY OF COVERAGE

(1) The examiners found one violation § 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company included a billing statement on a notice of cancellation where payment would not have influenced the cancellation.

The company respectfully disagrees. The Company mailed a notice of cancellation to the insured on February 18, 2015. The cancellation reason listed was “DRIVER DOES NOT HOLD A VALID U.S. DRIVER'S LICENSE: CANCEL DUE TO ELIGIBLE TO BE RATED DRIVER DOES NOT HAVE A VALID LICENSE.” The bottom portion of the notice of cancellation included a statement indicating a past-due balance. The cancellation notice clearly states “To reinstate your policy the information or document required and any payment amount due on or prior to the termination.” The billing statement at the bottom of the notice of cancellation did influence the cancellation given that, as specified in the cancellation notice, the policy would not be reinstated unless the information needed to cure the underwriting portion of the cancellation was received, along with the amount due, prior to the termination date.

(2) The examiners found one violation of § 38.2-610 A of the Code of Virginia. The company failed to provide the insured written AUD notice.

The company respectfully disagrees. The written AUD notice was printed on the back side of the Notice of Cancellation, which was included in the file reviewed by examiners.

(3) The examiners found one violation of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

TPA025: The Company respectfully disagrees. The Bureau indicated that the correct earned premium was \$158 plus \$6 in installment fees. The insured paid a down payment of

\$185.00, and two payments of \$150.20. One of the payments was returned and the company issued a refund of \$16.20. The Company collected a net amount of \$319, \$316 in premium and a \$3 installment fee. The full term policy premium was \$921 and the policy was in force for 63 days. The unearned premium factor for 63 days in a 183 day is .656. This result in an earned premium of \$316 which is consistent with what the company collected net of the returned item and the refund issued. This was contained in the file and explained to examiners at the time of the examination. This violation should be removed.

(4) The examiners found two violations § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle. The company attempted to exclude a driver contrary to the statute.

The finding by the Bureau in this area is unrelated to a Company-initiated cancellations in the first 60 days.

Notwithstanding the above objection, the Company responds as follows:

The company respectfully disagrees. No policy issued by the company had any individual listed as an excluded driver. There is no provision in the policy contract or any endorsement to exclude a driver from coverage.

The policy declarations during part of the examination period included a section labeled “non-drivers” that has the following statement:

“The persons listed below are not considered in the rating of this policy because such persons DO NOT DRIVE and therefore will not be given permission to drive any of the policy vehicles. The Named Insured will notify the Company when any such persons become licensed or permitted to drive.”

This statement does not indicate that coverage will not be applicable and does not place a limitation on who the Named Insured allows to drive policy vehicles. It does specify that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

The application for insurance as a section on the third page titled “IMPORTANT” that requires the Named Insured to name all persons, except drivers listed on page one, who reside in the household. This section includes the following statement:

“I understand that the person(s) shown below will be listed on my policy but not considered in the rating of my policy because this person(s) DOES NOT DRIVE my vehicle(s) and has not and will not be given permission to drive any of my vehicles. I understand that all persons in my household who operate my vehicles must be rated drivers, and I warrant that this person(s) is not operating any of my vehicles at this

time. I agree to notify the Company when any person listed below becomes licensed or permitted to drive. I understand that it is material misrepresentation if I have falsified this information. I further understand that the above statements and declarations are part of my policy and that such statements and declarations materially affect the decision to issue the policy and/or the premium to be charged, and that any such statement or declaration that is untrue may result in the policy being voided and coverage for any claims thereunder denied.”

This statement affirms that the individuals listed in the “IMPORTANT” section are not included in rating because they do not drive policy vehicles. It confirms that the insured does not intend to give permission to a listed individual to drive any policy vehicle and confirms understanding that in persons in the household who operate policy vehicles must be listed as rated drivers. This section does not limit who the Named Insured gives permission to operate policy vehicles, it specifies that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

Notwithstanding the foregoing, prior to this examination and during the examination period the company has discontinued usage of the application and declarations pages that contain the statements above, and effective 7/19/2015 began using a new application and declarations that do not include the language in question. There are no violations in this examination regarding the new application and declarations.

(5) The examiners found two violations of § 38.2-2208 B of the Code of Virginia. The company failed to retain proof of mailing the cancellation notice to the insured.

TPA 001 TPA 014

The Company respectfully disagrees. The Company has proof of mailing the cancellation notice to the insured for each of the above policies. These documents were contained in the files reviewed by examiners, and were provided again in the course of the examination in response to this preliminary observation.

(6) The examiners found one occurrence where the company failed to comply with the provisions of the insurance contract. The company failed to provide advance notice of cancellation the insured.

Prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this from occurring in the future. No further action is needed.

NOTICE MAILED AFTER THE 59TH DAY OF COVERAGE

(1) The examiners found one violation of § 38.2-228 of the Code of Virginia. The company failed to file proof of financial responsibility with the Bureau of Motor Vehicles without unreasonable delay.

The Company respectfully disagrees. The insured never requested that the insured file proof of financial responsibility. Section 38.2-228 requires that insurers provide proof of financial responsibility “at the request of a named insured.” Since the insured did not request that the company file proof of financial responsibility, the Company had no obligations under § 38.2-228, and no violation occurred.

(2) The examiners found one violation of § 38.2-2208 A of the Code of Virginia. The company failed to obtain proof of mailing the cancellation notice of the insured.

The Company respectfully disagrees. The Company obtained proof of mailing from the United States Postal Service. The Bureau asserts that the proof of mailing from the United States Postal Service is not sufficiently legible rendering it invalid. The Company has in its file a digital copy of proof of mailing stamped by the United States Postal Service. The stamp is sufficiently legible and constitutes valid proof of mailing. This document was contained in the file reviewed by examiners, and was provided again in the course of the examination in response to this preliminary observation.

(3) The examiners found two violations of § 38.2-2212 D of the Code of Virginia. The company cancelled the insured’s motor vehicle policy for a reason not permitted by the statute.

TPA019: No Dispute

TPA020: For this file, the Company respectfully disagrees. The policy inception date was 9/06/2014, and the notice of cancellation was mailed on 10/29/2014, which is less than 60 days later. Since the policy was in effect less than 60 days from when the termination was mailed, subsection F.3. provides that nothing in § 38.2-2212 applies. The cancellation notice issued by the Company was not in violation of § 38.2-2212 D because it was mailed less than 60 days from inception.

(4) The examiners found two violations of § 38.2-2212 E of the Code of Virginia. The company failed to mail the notice of cancellation to the insured at least 45 days before the cancellation effective date.

Prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this issue from occurring. No further action is needed.

All Other Cancellations – Automobile Policies

NONPAYMENT OF THE PREMIUM

(1) The examiners found four violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau.

a. In two instances, the company failed to calculate the earned premium correctly.

The Company respectfully disagrees:

TPA028: The insured's second payment was returned unpaid by the bank. When the policy was sent to collections for the unpaid amount the company reversed \$13 in late/service fees incurred by the insured.

TPA039: The \$9.90 the Bureau indicates that the company overcharged was an amount sent to collections and was not paid by the insured. Additionally, prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this issue from occurring. In any event, no violation occurred.

b. In two instances, the company charged a reinstatement fee that was not on file with the Bureau.

The Company does not disagree. This was corrected in a subsequent filing, and no further action is needed.

(2) The examiners found 17 violations of § 38.2-2208 B of the Code of Virginia.

a. In nine instances, the company failed to retain proof of mailing the cancellation notice to the insured.

TPA028	TPA039	TPA042	TPA043	TPA044
TPA046	TPA048	TPA049	TPA050	

For the above-referenced files, the Company respectfully disagrees. The Company retained proof of mailing the cancellation notice to the insured for each of the above policies. These documents were contained in the files reviewed by examiners, and were provided again in the course of the examination in response to this preliminary observation.

b. In two instances, the company failed to provide proper notice of cancellation to the lienholder.

The Company respectfully disagrees:

TPA028: The Company provided notice to the lienholder's address of record. The vehicle in question was added to the policy on in May of 2012. At that time the independent agent who entered the change entered "PO Box" without a PO Box Number. This is the only

address for the lienholder Mercury was ever provided, and was clearly displayed on every declarations page sent to the insured since the vehicle was added. Mercury sent the notice of termination to the only address on file for the lienholder. This was the same address the original declarations was sent to informing the lienholder of coverage.

TPA049: There was no lienholder listed on this policy. In the initial application for insurance the insured listed an additional interest and did not list a lienholder. This was demonstrated and explained to examiners in the course of the examination.

c. In five instances, the company failed to retain copy of the cancel notice to the lienholder.

TPA028: The Company respectfully disagrees. Notice of cancellation was sent to the lienholder on each of the five listed vehicles via LexisNexis FIRSt, a vendor contracted by the company. Proof of mailing was obtained by LexisNexis FIRSt and is available to the Company. The documents were retrieved in response to this preliminary observation and provided to examiners in the course of the examination. These violations should be removed.

d. In one instance, the company failed to retain the electronic notification of cancellation the lienholder.

TPA028: The Company respectfully disagrees. Notice of cancellation was sent to the lienholder on each of the five listed vehicles via LexisNexis FIRSt, a vendor contracted by the company. Proof of mailing was obtained by LexisNexis FIRSt and is available to the Company. The documents were retrieved in response to this preliminary observation and provided to examiners in the course of the examination.

(3) The examiners found two violations of § 38.2-2212 E of the Code of Virginia.

a. In one instance, the company failed to send notice of cancellation to the insured.

The Company does not disagree. The individual who processed the cancellation on the policy selected an incorrect option causing the policy to be terminated due to the renewal down payment being returned unpaid and no cancellation notice to be sent to the insured. This was an isolated human error that will be addressed through employee training.

b. In one instance, the company failed to provide 15 days advance notice of cancellation to the insured.

TPA054: The Company respectfully disagrees. This policy was terminated at inception due to a dishonored payment. As indicated in the application for insurance coverage was conditioned upon the payment being honored by the bank of financial institution. When the initial payment is not received, a valid contract cannot be formed, and the company has a common-law right to rescind. As the payment was not honored, the policy was void from

inception and the company had no duty to send the insured a 15-day advance notice. Furthermore, the 15-day notice period is not required, under subdivision F.3. of Section 38.2-2212, for cancellations in the first 60 days. This violation should be removed.

Other Law Violations

The examiners found one violation § 46.2-482 of the Code of Virginia. The company failed to file an SR-26 within 15 days of cancelling the policy as required by the Virginia Motor Vehicle Code.

TPA050: The Company respectfully disagrees. Company records indicate that the cancellation was effective 7/30/2015 and the SR-26 was submitted on 8/06/2015. The VA DMV website shows the SR22 was terminated effective 7-30-2015. These documents were contained in the file reviewed by examiners, and were pointed out and provided again in the course of the examination in response to this preliminary observation. This violation should be removed.

REQUESTED BY THE INSURED

(1) The examiners found two violations of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

TPA065: The Company respectfully disagrees. The Bureau indicated during the examination that “it appears the company is fully earning the policy fee” and “It also appears that the company is calculating the return premium based upon a July 17, 2015 instead of the cancellation date of June 30, 2015.” The Bureau provided no calculation or basis for this conclusion. The company respectfully disputes this finding. The Company’s records reflect that the cancellation was based upon the June 30, 2015, cancellation date and that the premium was correctly computed.

TPA069: The Company does not disagree. The excess refund issued on this policy was a result of a policy writing system error. Prior to this examination and during the examination period the company deployed a new policy writing system which will prevent this issue from occurring, and no further corrective action is needed.

(2) The examiners found two violations of § 38.2-2212 F of the Code of Virginia. The company failed to obtain a written request from the insured to cancel his policy.

TPA068: The Company respectfully disagrees. The Company’s file contains a written request to cancel. The written request contains an illegible signature above a typed line bearing the insured’s name. This document was contained in the file reviewed by examiners, and was provided again in the course of the examination in response to this preliminary observation.

TPA066: The Company maintains that the policy was cancelled in response to a request from the insured, but does not dispute that a written request for cancellation was not received.

(3) The examiners found two occurrences where the company failed to comply with the provisions of the insurance policy. The company failed to use the cancellation date requested by the insured.

TPA063: The Company respectfully disagrees. The signed request to cancel the policy indicated a requested effective date of 5/18/2015. The company cancelled the policy effective 5/18/2015. This was the date requested by the insured and agreed to by the Company as indicated in the Cancellation for Insured's request confirmation mailed to the insured on 5/29/2015. This document was contained in the file reviewed by examiners, and was pointed out and provided again in the course of the examination in response to this preliminary observation.

TPA065: The Company respectfully disagrees. The Bureau indicates that the company failed to honor the cancellation effective date requested by the insured. The Bureau based this on the fact that the cancellation request uploaded by the agency is an unclear copy. The company maintains that the copy is sufficiently legible to clearly determine that the insured and agent signed the cancellation request on 6/30/2015 with a requested cancellation effective date of 6/30/2015. The company cancelled the policy effective 6/30/2015 as requested. The company has received no indication from the insured or the agent that the insured requested that the policy be cancelled effective on a different date.

Company-Initiated Non-renewals – Automobile Policies

(1) The examiners found two violations of § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle. The company attempted to exclude a driver contrary to the statute.

The finding by the Bureau in this area is unrelated to a Company-initiated non-renewal. Notwithstanding this objection, the Company responds as follows with respect to the files below:

TPA073 TPA075

The company respectfully disagrees. No policy issued by the company had any individual listed as an excluded driver. There is no provision in the policy contract or any endorsement to exclude a driver from coverage.

The policy declarations during part of the examination period included a section labeled "non-drivers" the following statement:

"The persons listed below are not considered in the rating of this policy because such persons DO NOT DRIVE and therefore will not be given permission to drive any of the

policy vehicles. The Named Insured will notify the Company when any such persons become licensed or permitted to drive.”

This statement does not indicate that coverage will not be applicable and does not place a limitation on who the Named Insured allows to drive policy vehicles. It does specify that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

The application for insurance as a section on the third page titled “IMPORTANT” that requires the Named Insured to name all persons, except drivers listed on page one, who reside in the household. This section includes the following statement:

“I understand that the person(s) shown below will be listed on my policy but not considered in the rating of my policy because this person(s) DOES NOT DRIVE my vehicle(s) and has not and will not be given permission to drive any of my vehicles. I understand that all persons in my household who operate my vehicles must be rated drivers, and I warrant that this person(s) is not operating any of my vehicles at this time. I agree to notify the Company when any person listed below becomes licensed or permitted to drive. I understand that it is material misrepresentation if I have falsified this information. I further understand that the above statements and declarations are part of my policy and that such statements and declarations materially affect the decision to issue the policy and/or the premium to be charged, and that any such statement or declaration that is untrue may result in the policy being voided and coverage for any claims thereunder denied.”

This statement affirms that the individuals listed in the “IMPORTANT” section are not included in rating because they do not drive policy vehicles. It confirms that the insured does not intend to give permission to a listed individual to drive any policy vehicle and confirms understanding that in persons in the household who operate policy vehicles must be listed as rated drivers. This section does not limit who the Named Insured gives permission to operate policy vehicles, it specifies that the Named Insured will notify the company when a “non-driver” becomes licensed or is permitted to drive.

Notwithstanding the foregoing, prior to this examination and during the examination period the company has discontinued usage of the application and declarations pages that contain the statements above, and effective 7/19/2015 began using a new application and declarations that do not include the language in question. There are no violations in this examination regarding the new application and declarations.

(2) The examiners found one violation of § 38.2-2208 B of the Code of Virginia. The company failed to obtain valid proof of mailing the refusal to renew notice to the lienholder.

TPA075: The Company respectfully disagrees. The refusal to renew notice was mailed by our vendor, LexisNexis using the FIRSt service. A copy of the PS form 3607R Mailing

Transaction Receipt along with documentation from LexisNexis FIRSt was retrieved and provided to the Bureau in our response from May 17, 2016, and again in our response September 12, 2016.

Company-Initiated Cancellations – Homeowners Policies

NOTICE MAILED PRIOR TO THE 90TH DAY OF COVERAGE

(1) The examiners found one violation of § 38.2-502 of the Code of Virginia. The company misrepresented the benefits, advantages, conditions, or terms of the insurance policy. The company included a billing statement on a notice of cancellation where payment would not have influenced the cancellation.

The Company disagrees. Section 38.2-502 does not state that insurers may not send a billing statement in conjunction with a cancellation notice. The billing statement in no way influences the cancellation as the examiners have indicated in this report itself. As the billing statement in no way influences the cancellation there cannot be a violation of Section 38.2-502. No violation occurred here.

(2) The examiners found one violation of § 38.2-1906 D of the Code of Virginia. The company failed to use the rules and/or rates on file with the Bureau. The company failed to calculate the earned premium correctly.

The Company was never provided proper notice or a copy of the review sheet for this alleged violation. Additionally, this cancellation notice was mailed on 08/25/2014 which falls outside of the review period for this examination. Furthermore, had we had the proper opportunity to respond to this allegation we would have provided the examiners with a copy of the calculations demonstrating that the earned premium was calculated properly. That calculation is as follows:

05-29-14 to 07/03/14 @ \$1,125 = 37 days @ .101 Pro Rata Earned - \$113.625 - \$114 rounded

07/03/14 to 09/25/2014 @ \$1,334 = 85 days @ .233 Pro Rata Earned - \$310.82 - \$311 rounded

Total premium earned: \$435

The violation on this file (THO022) should be removed.

(3) The examiners found one violation of § 38.2-2113 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the insured.

The Company provided a copy of the proof of mailing to the examiners to demonstrate that we had properly mailed this cancellation notice. We did not receive a timely response and therefore presumed the violation to have been removed. We ask that the Bureau review the proof we provided and remove the violation on the following file: THO003

(4) The examiners found three violations of §38.2-2113 C of the Code of Virginia.

The company does not disagree. These were isolated occurrences that will be corrected with our vendor.

NOTICE MAILED AFTER THE 89TH DAY OF COVERAGE

(1) The examiners found two violations of §38.2-2113 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the insured.

The Company disagrees. We provided a valid copy of the certificate of mailing for the two policies in question. The examiner alleges the violation stating that the USPS stamp provided by the post office smeared slightly. The USPS stamp is clearly legible and fully proves that we provided a proper certificate of mailing and are in full compliance with this section. We ask that these two violations be removed: THO019, THO056

(2) The examiners found six violations of §38.2-2113 C of the Code of Virginia.

The Company uses a third-party vendor to provide notice to lienholders, and proof of the notice is retained by the company as required by Section 38.2-2113. The Company does not agree that its process is non-compliant, and requests that these violations be removed. However, the Company will address the Bureau's concerns:

- a. We will provide proper notice in all occasions.
- b. We will retain a copy of the lienholder cancellation notice in all circumstances.
- c. We will retain valid proof of mailing in all circumstances if the notice is mailed.

(3) The examiners found five violations of §38.2-2114 A of the Code of Virginia. The company cancelled a policy insuring an owner-occupied dwelling after the 89th day of coverage for a reason not permitted by the statute.

The Company agrees. A former employee cancelled those policies in error and this will no longer be an issue going forward.

(4) The examiners found one violation of §38.2-2114 C of the Code of Virginia. The company failed to provide 30 days' notice to the insured when the company cancelled the policy after the 89th day of coverage.

The Company agrees. The system has been corrected to generate all notices promptly.

All Other Cancellations – Homeowners Policies

NONPAYMENT OF PREMIUM

(1) The examiners found one violation of §38.2-1318 of the Code of Virginia. The company failed to provide convenient access to files, documents, and records relating to the examination. The company failed to provide the insured's cancellation documentation.

The Company disagrees. We provided a copy of the cancellation notice and the certificate of mailing to evidence proper mailing. The Company complied with all rules and regulations and this violation should be removed: THO030

(2) The examiners found two violations of §38.2-2113 A of the Code of Virginia. The company failed to obtain valid proof of mailing the cancellation notice to the insured.

The Company does not dispute this finding.

(3) The examiners found 13 violations of §38.2-2113 C of the Code of Virginia.

The Company uses a third-party vendor to provide notice to lienholders, and proof of the notice is retained by the company as required by Section 38.2-2113. The Company does not agree that its process is non-compliant, and requests that these violations be removed. However, the Company will address the Bureau's concerns:

a. In seven instances, the company failed to provide proper notice of cancellation to the lienholder.

We will provide proper notice in all occasions.

b. In four instances, the company failed to retain the cancellation notice sent to the lienholder.

We will retain a copy of the lienholder cancellation notice in all circumstances.

c. In two instances, the company failed to retain proof of mailing the cancellation notice to the lienholder.

We will retain valid proof of mailing in all circumstances when notice is mailed.

Company Initiated Non-Renewals – Homeowners Policies

(1) The examiners found six violations of §38.2-2113 C of the Code of Virginia. The company failed to provide proper notice of nonrenewal to the lienholder.

The Company uses a third-party vendor to provide notice to lienholders, and proof of the notice is retained by the company as required by Section 38.2-2113. The Company does not agree that its process is non-compliant, and requests that these violations be removed. However, the Company will address the Bureau's concerns: We will provide proper notice in all occasions.

(2) The examiners found one violation of §38.2-2114 I of the Code of Virginia. The company non-renewed a policy for a reason not permitted by the statute.

The Company agrees. A former employee non-renewed those policies in error and this will no longer be an issue going forward.

CLAIMS REVIEW

Private Passenger Automobile Claims

(1) The Examiners found 49 violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

These findings occurred with such frequency as to indicate a general business practice.

The company respectfully disagrees with these alleged violations. The Company utilizes one of two claim databases, Guidewire or NextGen depending on the line of business, which records policy and claim information and transactional data. The Company maintains contractual relationships with unaffiliated third-parties, including: Mitchell, E-Subro Hub, Enterprise Rent-a-Car, and Hertz. These third-parties maintain databases which compile, compute, and/or warehouse additional claims transactional data. The information warehoused by these third-parties may be retrieved by indexing the Company's claim numbers, and thus are maintained as part of the claim files and available to reconstruct relevant events pertinent to each claim. The Bureau was provided with access to Guidewire, NextGen, Total Loss Manager, and Mitchell WorkCenter. While access for the Examiners could not be obtained for E-Subro Hub, Lexis Nexis OrderPoint, Enterprise Rent-a-Car's A.R.M.S. system and Hertz Rent-Cars system, transactional data was retrieved by Mercury on individual claim files in response to the Examiners' inquiries.

The Bureau indicated the Company failed to provide a copy of the rental invoice for the following BOI Reference Numbers, although a copy of each rental invoice was retrieved from the Enterprise A.R.M.S. system by Mercury and provided to the Examiners at the time of the on-site review:

CPA002
CPA005
CPA016

CPA023
CPA024
CPA029

CPA038
CPA040
CPA045

CPA053
CPA065
CPA066

CPA072
CPA080
CPA090

CPA092

The Bureau indicated the Company failed to provide a copy of the Estimate, Supplemental Damage Estimate, and/or Direction of Pay form for the following BOI Reference Numbers, although the Examiners were provided access to the Mitchell WorkCenter system and instructions for use. In addition, a copy of the Estimate, Supplemental Damage Estimate, and/or Direction of Pay form was retrieved from the Mitchell WorkCenter system by Mercury and provided to the Examiners at the time of the on-site review:

CPA002
CPA005
CPA010
CPA011
CPA013
CPA014

CPA023
CPA024
CPA028
CPA029
CPA087
CPA088

CPA095
CPA096
CPA097
CPA099

The Bureau indicated the company failed to provide a copy of the signed Title, the Total Loss Work-up, the Salvage Calculation Documentation, and/or Total Loss email communications for the following BOI Reference Numbers although the Examiners were provided access to the Total Loss Manager system and instructions for use. In addition, a copy of the signed Title, Total Loss Work-up, and/or Salvage Calculation Documentation was retrieved from the Total Loss Manager system and/or the Total Loss Claim file by Mercury Companies and provided to the Examiners at the time of the on-site review:

CPA005
CPA011
CPA013
CPA014

CPA016
CPA017
CPA024
CPA028

CPA031
CPA053
CPA088
CPA094

The Bureau indicated the company failed provide a copy of the signed Release for the following BOI Reference Numbers. The company respectfully disagrees with these alleged violations. The company does not require a fully executed Release in order to resolve a Bodily Injury Liability Claim in all cases in accordance with our Best Practices, Policies and Procedures. No provision of law requires a release under these circumstances.

CPA005

CPA087

CPA088

The Bureau indicated the company failed to provide a copy of the estimate or rental invoice in the file for the following BOI Reference Numbers. The company respectfully disagrees with these violations. An estimate was not completed and a rental contract not executed because they were not necessary or material to the claim.

CPA009

The Bureau indicated the company failed to provide a copy of the Subrogation Documents although a copy of the Subrogation Documents were retrieved from the E-Subro Hub system by Mercury and provided to the Examiners at the time of the on-site review:

CPA011

CPA053

The Bureau indicated the company failed to provide medical bills although the medical bills were retrieved from the claim file which was provided to the Bureau at the time of the on-site review. The medical bills were overlooked by the Examiner on the following files:

CPA011

CPA053

The Bureau indicated the company failed to provide a copy of the Tow Bill although the Tow Bill was retrieved from the claim file which was provided to the Bureau at the time of the on-site review. The Tow Bill was overlooked by the Examiner:

CPA020

CPA021

The Bureau indicated the company failed to provide a copy of the Letter of Representation although the Letter of Representation was retrieved from the claim file which was provided to the Bureau at the time of the on-site review. The Letter of Representation was overlooked by the Examiner:

CPA026

CPA065

CPA094

The Bureau indicated the company failed to provide a copy of the claimant carrier denial letter although the denial letter was retrieved from the claim file which was provided to the Bureau at the time of the on-site review. The denial letter was overlooked by the Examiner:

CPA060

CPA078

CPA085

The Bureau indicated the company failed to provide a copy of the Police Report although a copy of the Police Report was obtained from the Lexis Nexis OrderPoint system by Mercury Companies and provided to the Examiners at the time of the on-site review:

CPA014

CPA078

The Bureau indicated the company failed to provide medical bills although medical bills were not received from the insured or claimants on the claim file. Mercury was unable to provide a copy because they do not exist with respect to this claim:

CPA014

The Bureau indicated the company failed to provide the rental invoice for the claimant although the claimant did not seek a rental vehicle. Mercury was unable to provide a copy because the records do not exist:

CPA024

The Bureau indicated the company failed to provide a copy of the Police Report although the Police Report was ordered but could be located by our vendor, Lexis Nexis. The Examiners were provided with documentation to support the order and lack of availability of the report at the time of the on-site review.

CPA024

The Bureau indicated the following file was a violation of 14 VAC 5-400-30 although the information provided by the Bureau did not match the specifics to the claim file. The company believes the violation was in error:

CPA048

The Bureau indicated the following file was a violation of 14 VAC 5-400-30 although the Property and Casualty Market Conduct Examination – Review Sheet did not cite this regulation:

CPA018
CPA041

CPA057
CPA068

CPA070
CPA093

The company is in agreement 4 of the 49 violations assessed. The company is in agreement with the violations assessed on the following BOI Reference Numbers:

CPA010
CPA049

CPA059
CPA091

(2) The Examiners found 16 violations of 14 VAC 5-400-40. The company obscured or concealed from a first party claimant, directly or by omission, benefits, coverages, or other provisions of an insurance policy that were pertinent to the claim.

a. In one instance, the company failed to inform an insured of his physical damage deductible when the file indicated that the coverage was applicable to the loss.

The Bureau indicated the insured had Collision coverage on a vehicle, but the company did not advise him of this. However, as per our written response to the State at the time of the on-site examination, the vehicle did not have Collision coverage as of the date of loss as evidenced by the Declaration page which was provided at the time of the on-site examination:

CPA060

b. In two instances, the company failed to accurately inform an insured of his Medical Expense Benefits coverage when the file indicated the coverage was applicable to the loss.

The Bureau indicated the file did not specify that the insured was advised of her Medical Payments limits. However, the adjuster documented that all coverages were reviewed with the insured at the time of the first contact:

CPA004

The Bureau indicated the following file was a violation of 14 VAC 5-400-30 although the violation denoted for this file is for § 38.2-510 A-10. The company believes the violation was in error.

CPA070

c. In six instances, the company failed to accurately inform an insured of his Transportation Expenses coverage when the file indicated the coverage was applicable to the loss.

The Bureau indicated the file did not specify that the insured was advised of Transportation Expenses coverage. However, prior to the adjuster explaining coverages to the insured, the Mercury First Notice of Loss Call Center representative set up a direct bill rental reservation for the insured with Enterprise Rent-a-Car. In addition, the adjuster documented that “coverages explained to NI” in her claim notes:

CPA011

The Bureau indicated the company did not advise the insured that he had Transportation Expense coverage that would have been available before the company confirmed that this claim was UMPD. However, the adjuster documented his telephone conversation with the insured on 12/10/2014, in which he explained the Transportation Expense coverage. A copy of the claim notes were provided to the Examiner at the time of the on-site examination:

CPA060

The Bureau indicated the file did not specify that the insured was advised of Transportation Expenses coverage. However, the adjuster documented that all coverages were reviewed with the insured at the time of the first contact and specified all of the coverage discussed in an online note dated 11/18/2014. A copy of the claim notes were provided to the Examiner at the time of the on-site examination:

CPA062

The Bureau indicated the file did not specify that the insured was advised of Transportation Expenses coverage. However, the adjuster documented in his online notes that

coverages were explained. In addition, the adjuster documented in his online notes that the insured was not making a Collision claim. Finally, the estimated damages were under the insured's Collision deductible. As such, the Transportation Expenses coverage was not applicable:

CPA075

The Bureau indicated the file did not specify that the insured was advised of Transportation Expenses coverage. However, the adjuster documented that coverages were explained to the insured in an online note dated 4/20/2015. A copy of the claim notes were provided to the Examiner at the time of the on-site examination:

CPA083

(3) The Examiners found four violations of 14 VAC 5-400-50 C. The company failed to make an appropriate reply within ten working days to pertinent communications from a claimant, or a claimant's authorized representative, that reasonably suggested a response was expected.

The Bureau indicated the Letter of Representation was received 1/22/2015. It appears from the file notes that the letter was not acknowledged until 3/18/2015. The adjuster issued an Acknowledgement of Attorney Representation on 1/29/2015 as evidenced by the claim file document history and a copy of the document itself. This represents six business days which is in compliance with the regulation:

CPA068

(4) The Examiners found two violations of 14 VAC 5-400-70 A. The company failed to deny a claim or part of a claim, in writing, and/or failed to keep a copy of the written denial in the claim file.

The Bureau indicated the company denied UMPD to the insured based on 50% contributory negligence. The company did not send the insured a denial letter explaining the reason for the denial because no claim was denied. The adjuster note dated 4/10/2015 indicated the adjuster spoke with the insured who indicated she was not making a claim for damages to her vehicle. A letter was issued to the named insured confirming she was not making a claim for damages. A UMPD denial was not issued as the insured had previously made it clear she was not pursuing damages for her vehicle:

CPA075

(5) The Examiners found 31 violations of 14 VAC 5-400-70 D. The company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim in accordance with the insured's policy provisions.

a. In three instances, the company failed to pay the insured's UMPD claim properly when Collision and/or UMPD coverages applied to the claim.

The Bureau indicated the company should have refunded the insured their \$200 UM deductible. The Bureau contends that no deductible should have been taken because the third party was known. The third party met the definition of an "Uninsured motor vehicle" pursuant to the American Mercury Insurance Company Virginia Private Passenger Automobile Insurance Policy (Ed 07/2010). Neither the Virginia regulation nor the Insurance Policy indicate the deductible may be waived if the uninsured claimant is identified. As the \$200 has not been recovered from the third party, the \$200 has not been returned to the insured:

CPA078

CPA091

CPA082

b. In one instance, the company failed to pay the insured's rental benefits, available under the UMPD coverage and/or UIM coverage.

The Company does not dispute this violation.

c. In nine instances, the company failed to pay the proper sales and use tax, title fee, and/or license fee on first party total loss settlements.

The Bureau indicated the total loss evaluation was not in the file and it was not possible to determine if the insured was paid correctly. The company provided the total loss evaluation from the Total Loss claim file to the Examiner at the time of the on-site examination:

CPA016

CPA056

CPA017

CPA053

d. In five instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Medical Expense Benefits coverage.

The Bureau indicated it appeared the driver was injured but the company did not inform the insured driver of the available medical benefits coverage. The first notice of loss did not denote any injuries to the driver of the insured vehicle. In addition, when the adjuster took a recorded statement from the driver of the insured vehicle on 10/7/2014, he reconfirmed he was not injured. Medical Expense Benefits coverage was not paid as the driver was not injured and there were no guest passengers in the insured vehicle:

CPA006

The Bureau indicated funeral expenses were not paid for the driver of the insured's vehicle. A Medical Expense coverage availability letter was issued to the "Estate of" the named insured on 6/30/15 which indicated, "We will pay for reasonable expenses incurred for medical or funeral services due to injury caused by an accident." As of the date of the examination, the driver's estate had not presented any bills associated with the funeral for consideration. The claim was still open and under investigation at the time of the on-site examination:

CPA035

The Bureau indicated the company paid the provider direct without an Assignment of Benefits. Payments were issued to the medical providers AND the insureds as the medical provider asserted liens on the insureds which included the company. A copy of the medical lien was provided to the Examiner at the time of the on-site examination:

CPA041

The Bureau indicated the company paid the provider and should have paid the insured. The Bureau contends that the file does not contain a valid AOB or direction to pay by the insured, so the company should pay the insured \$1,640.18 in medical benefits. As per the company review, the medical bill provided by the medical provider was for \$1,359.44. The amount of \$1,640.18 referenced was made payable to the insured under Collision coverage as it reflected the total loss settlement amount. A copy of the medical bill was retrieved from the claim file and was provided to the Examiner at the time of the on-site examination. The Medical Expense payment was made payable to the insured and not the medical provider as evidenced by the payment record provided to the Examiner at the time of the on-site examination.

CPA083

The Bureau indicated the rental invoice, DOP, and Letter of Representation were not in the file. This review sheet does not pertain to the category referenced above:

CPA086

- e. In eleven instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Transportation Expenses coverage.*

The Bureau indicated the rental invoice was not in the file, therefore, it was not possible to determine if the rental was paid correctly. The company retrieved the rental invoices from the electronic claim file through the Enterprise ARMS system and provided copies to the Examiner at the time of the on-site examination.

CPA016
CPA053
CPA057
CPA066

CPA080
CPA086
CPA090
CPA095

CPA097

The Bureau indicated the company failed to pay the full rental amount. The Bureau contends that the insured was charged CDW, and the company did not inform the insured prior to her obtaining a rental; therefore, the company owes the CDW charges. The company feels the Examiner has made an unjustified assumption that the company did not inform the insured prior to obtaining a rental that the company would not pay the CDW charges. When establishing a direct bill rental for the insured, the adjuster is required, pursuant to the company's policies and

procedures, to identify the terms/conditions of the Transportation Expense coverage. One of the discussion points is the fact that there is no coverage for the insurance coverage offered by the rental agency. In addition, the insured was advised in a conversation with the company's rental vehicle representative on 2/13/2015 that she was responsible for the gas and additional insurance she purchased through the rental agency:

CPA066

The Bureau indicated the rental invoice was not in the file, therefore, it was not possible to determine if the rental was paid correctly. The Bureau submitted a second review sheet at the time of the final report indicating, the company had not provided a copy of the rental bill. The company retrieved the rental invoices from the electronic claim file through the Enterprise ARMS system and provided copies to the Examiner at the time of the on-site examination:

CPA072

CPA090

f. In eleven instances, the company failed to pay the claim in accordance with the policy provisions under the insured's Other Than Collision or Collision coverage.

The Bureau indicated the insured had tinted windows on the car and that the company failed to provide coverage for the window tint. The company provided the Examiner a copy of the estimate which included the window tint at the time of the on-site examination. This was included in the payment to the insured:

CPA003

The Bureau indicated the company did not pay the repairs according to the CCC Accumark Audit Report guidelines. The CCC report states the following regarding the RT Tail Lamp: "Aftermarket part used on newer vehicle, not allowed." The estimate shows that the company used an aftermarket RT tail lamp, even though the CCC Audit Report stated it was not allowed. The CCC Audit Report also states that the actual cost of the Car Cover was \$13.80, the rule allows for \$10. On the estimate the company charged \$5. According to the Bureau, it is not clear as to why the company charged \$5 for the Car Cover. The Company disagrees. This claim was processed through Mercury's Open Shop Channel which allows our insured's to take their vehicles to the shop of their choice for inspection and subsequent repair. Mercury did not write the repair estimate. With regards to the (1) Aftermarket Tail Lamp --- An aftermarket tail lamp from Richmond Bumper was used for this repair. The shop manager reported to us that she went over her repair plan and the use of the aftermarket part with the named insured before starting the repair. She also reported that she gave the named insured a copy of the final estimate of record along with the Toyota Dealership invoice (see attached) which includes the state required alternate parts usage disclosure. With regards to the (2) Car Cover – The car cover charge for this repair was \$13.80 (\$5.00 Materials + \$8.80 Labor). The company's appraisal guidelines for car cover allowance is \$10.00 which is based on a national industry average. Toyota's car cover charge is in line with our industry findings (some higher than \$10.00 and some lower), therefore no changes were made.

CPA045

(6) The Examiners found 18 violations of 14 VAC 5-400-80 D. The company failed to provide the vehicle owner with a copy of the estimate for the cost of repairs prepared by or on behalf of the company.

a. In 13 instances, the company failed to provide a copy of the estimate to the insured.

The Bureau indicated the company failed to give a copy of the estimate to the owner of the insured vehicle. The company provided the Examiner with a copy of the appraisal report and/or Mitchell WorkCenter journal entry notes at the time of the on-site examination which indicated a copy of the estimate was given to the vehicle owner:

CPA001

CPA049

CPA093

The Bureau indicated the company failed to give a copy of the estimate to the owner of the insured vehicle. The company provided the Examiner with evidence the estimate was emailed to owner of the insured vehicle at the time of the on-site examination. Evidence was either in the form of the actual email message and/or a copy of the Mitchell WorkCenter journal entry notes:

CPA002

CPA024

The Bureau indicated the company failed to give a copy of the estimate to the owner of the insured vehicle. The insured took the insured vehicle to the shop of his/her choice and a copy of the estimate was provided to the insured by the body shop. The estimate was forwarded to the company for review/payment:

CPA009

CPA010

The Bureau indicated the company failed to give a copy of the estimate to the owner of the insured vehicle. First notice of this Review Sheet was provided to the company at the time of the Market Conduct Examination Report dated January 24, 2017. The Mitchell WorkCenter journal entry notes indicate the body shop emailed a copy of the estimate to the owner of the insured vehicle:

CPA060

a. In five instances, the company failed to provide a copy of the estimate to the claimant.

The Bureau indicated the company failed to give a copy of the estimate to the claimant. The estimate was not given to the claimant as the claimant vehicle was deemed a total loss as a result of the accident. The violations on the following file(s) should be removed:

CPA024

CPA088

The Bureau indicated the company failed to give a copy of the estimate to the claimant. The company provided the Examiner with a copy of the appraisal report at the time of the on-site examination which indicated a copy of the estimate was given to the claimant in person. The violations on the following file(s) should be removed:

CPA040

(7) The Examiners found 1 violation of 14 VAC 5-400-80 E/1. The company failed to provide the vehicle owner with a copy of the estimate for the cost of repairs prepared by or on behalf of the company.

The Bureau indicated the company cannot provide documentation with regard to betterment on the estimate. First notice of this Review Sheet was provided to the company at the time of the Market Conduct Examination Report dated January 24, 2017. The company did not take a betterment or depreciation reduction on this claim. As such, no documentation was warranted. The violations on the following file(s) should be removed:

CPA060

(9) The Examiners found four violations of § 38.2 510 A 1 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions relating to the coverage at issue.

The Bureau indicated the company waived the deductible for the insured contrary to policy provisions. The companies Policies, Procedures, and Best Practices permit the adjuster to waive the deductible upon verbal commitment of recovery from the claimant carrier. The violations on the following file(s) should be removed:

CPA001

CPA011

The Bureau indicated the company investigated the issue of the excluded driver as named on the application. The company properly afforded coverage but Virginia is a permissive use state and excluded drivers are not permitted. The individual in reference was listed as on the Automobile Declarations as a "Non-Driver" (i.e. unlicensed household member). The individual was disclosed as a resident of the household who is not licensed or permitted to drive. The Declaration indicates, "The person(s) listed below are not considered in the rating of this policy because such person(s) DO NOT DRIVE and therefore will not be giving permission to drive any of the policy vehicles. The Named Insured will notify the Company when any such person(s) become licensed or permitted to drive." The Declarations includes a contractual representation made by the named insured that the individual(s) is listed as a "Non-Driver". If the individual were to obtain his/her driver's license or permit, the named insured must contact his/her agent or the company to add the individual as a covered driver to the policy. The certification does not state the driver is excluded from coverage in the event of a loss. In the event of a loss involving such person, company shall conduct an investigation to determine whether the individual meets the definition of an "insured", whether any exclusions or conditions apply, and whether or not coverage applies to that loss. The company did not "exclude" the driver as stated in the Review Sheet. The violations on the following file(s) should be removed:

CPA024

The Bureau indicated that the company's statement on the bottom of the total loss offer letter is contrary to the provisions of the policy. The policy does not place a time limit on accepting a total loss offer. The letter lists a date and was used if the owner could not be contacted upon file assignment. The date gave a sense of urgency to the owner to contact the company so we could present settlement and issue payment to them expeditiously. Even though a date was provided, it was not a hard date as Mercury was still required to secure documents for settlement and transfer of title for salvage. The violations on the following file(s) should be removed:

CPA077

(10) The Examiners found two violations of § 38.2 510 A 3 of the Code of Virginia. The company misrepresented pertinent facts or insurance policy provisions relating to the coverage at issue.

The Bureau indicated the initial report of loss states that the insured was operating a 1990 Chevrolet, however there is not a 1990 Chevrolet on the policy. The company did not attempt to confirm if the vehicle the insured was driving was a listed vehicle. The first notice of loss indicates the insured was driving a 1990 Chevrolet K1500. The vehicle identification number was provided on the first notice of loss. The Automobile Declarations applicable for the date of loss lists this vehicle as Car #7.

CPA006

The Bureau indicated the company failed to investigate whether the amount of damage done to the vehicle was enough to consider the vehicle a total loss. The vehicle was declared a total loss; however, there is nothing in the claim file to show the amount of estimated damages. The company provided the Examiner with a copy of the estimate and total loss documentation during the on-site review. The estimate indicated the damage to the insured vehicle exceeded the present market value by 153%. The violations on the following file(s) should be removed:

CPA033

(11) The Examiners found five violations of § 38.2 510 A 6 of the Code of Virginia. The company failed to attempt, in good faith, to make a prompt, fair, and equitable settlement of a claim in which liability was reasonably clear.

The Bureau indicated the loss was reported 10/27/2014. The Bureau contends that the insured had collision coverage but the company did not advise him of this. Instead, the Bureau contends, the company investigated possible UMPD which delayed the payment to the insured under his collision coverage, and payment was not made for his deductible reimbursement until 8/25/2015 even though UMPD was confirmed on 12/10/2014. The company provided the Examiner with a copy of the Declarations Page at the time of the on-site investigation evidencing that the insured vehicle did not include Collision coverage on the date of loss. The named insured's UMPD deductible was returned to him on 8/25/2015 upon receipt of recovery directly from the claimant by the company's Subrogation Bureau. The violations on the following file(s) should be removed:

CPA060

(12) The Examiners found eight violations of § 38.2 510 A 10 of the Code of Virginia. The company made a claim payment to the insured that was not accompanied by a statement setting forth the correct coverage under which payment was made. These findings occurred with such frequency as to indicate a general business practice.

The Bureau indicated the company issued a check to the insured for "MP". The check should have stated Medical Expense. The adjuster listed the coverage as "MP" as the Company's Private Passenger Automobile Insurance Policy lists the coverage as "Medical Payment Coverage". As such, the coverage was abbreviated by the adjuster as "MP". The violations on the following file(s) should be removed: CPA017, CPA026

The Bureau indicated the check did not include the coverage under which the payment was made. The company provided a copy of the check issued to the claimant. The check was attached to a document which specified the coverage for which the check was issued. The violations on the following file(s) should be removed:

CPA024

The Bureau indicated the company issued a check to the insured for “ME”. The check should have stated Medical Expense. The adjuster listed the coverage as “ME” as an abbreviation for Medical Expense. The violations on the following file(s) should be removed:

CPA083

The Bureau indicated a violation of § 38.2 510 A 1 although a Review Sheet was not provided to the company advising of this error for the specified claim.

CPA057

(13) The Examiners found 11 violations of § 38.2 510 C of the Code of Virginia. The company failed to disclose the required aftermarket parts notice to the vehicle owner on the estimate of repairs or in a separate document.

The Bureau indicated the required After Market Parts notice was not on the claimant estimate even when aftermarket parts were used. The company provided the Examiner with a copy of the estimate at the time of the on-site examination. The statutory language for use of aftermarket parts was included on page 5 of the estimate. The violations on the following file(s) should be removed:

CPA068

The Bureau indicated the company failed to inform the claimant on their estimate for supplement damages about the use of an aftermarket part. The claimant’s body shop presented the supplemental estimate. This body shop estimate did not denote use of aftermarket parts, so no disclosure was required. The company’s supplemental estimate was generated for internal use only to validate the valuation of the supplemental estimate provided by the claimant’s body shop. The violations on the following file(s) should be removed:

CPA034

(14) The Examiners found three violations of § 38.2-2201 B of the Code of Virginia. The company failed to obtain a statement from an insured authorizing the company to make payments directly to the medical provider.

The Bureau indicated the company paid the bills to the medical provider without an assignment of benefits or at the direction of the insured. The Medical Expense Benefits payment was made payable to the medical provider and the insured. Payment was issued to both parties as the medical provider had issued the company a medical lien. A copy of the medical lien was provided to the Examiner at the time of the on-site examination. The violations on the following file(s) should be removed:

CPA041

The Bureau indicated the company paid the provider direct, with no Assignment of Benefits in the file. The Medical Expense Benefit payment was made payable to the insured and not the medical provider as evidenced by the payment record provided to the Examiner at the time of the on-site examination. The violations on the following file(s) should be removed:

CPA083

- (15) The Examiners found three violations of § 38.2-2204 of the Code of Virginia. The company issued a motor vehicle policy that did not provide coverage to the named insured and any other person using or responsible for the use of the motor vehicle as required by statute. The company attempted to exclude a driver contrary to the statute.***

The Bureau indicated declaration page listed a non-driver and included verbiage that states the driver would not operate the vehicle listed on the policy. The company cannot exclude drivers who are operating the vehicle with permissive use. The company listed the individual on the Automobile Declarations as a “Non-Driver” (i.e. unlicensed household member). The individual was disclosed as a resident of the household who is not licensed or permitted to drive. The Declaration indicates, “The person(s) listed below are not considered in the rating of this policy because such person(s) DO NOT DRIVE and therefore will not be giving permission to drive any of the policy vehicles. The Named Insured will notify the Company when any such person(s) become licensed or permitted to drive.” The Declaration includes a contractual representation made by the named insured that the individual(s) is listed as a “Non-Driver”. If the individual were to obtain his/her driver’s license or permit, the named insured must contact his/her agent or company to add the individual as a covered driver to the policy. The certification does not state the driver is excluded from coverage in the event of a loss. In the event of a loss involving such person, company shall conduct an investigation to determine whether the individual meets the definition of an “insured”, whether any exclusions or conditions apply, and whether or not coverage applies to that loss. No coverage was excluded. The violations on the following file(s) should be removed: CPA005, CPA006, CPA008

- (16) The Examiners found 12 occurrences where the company failed to comply with the provisions of the insurance policy.***
- a. In one instance, the company requested the insured obtain a copy of a police report when the report should have been obtained by the company.***

The Bureau indicated the company asked the insured to obtain the police report although it is the company’s obligation to obtain the police report as part of the investigation into the loss. If the insured was in possession of the police report, the company could request that the insured send a copy. However, the company cannot ask the insured to investigate the loss. The company adjuster ordered a police report from our third party vendor upon receipt of the claim. At no point during the investigation did the adjuster ask the insured to obtain the police report from the police Bureau. The violations on the following file(s) should be removed:

CPA016

b. In three instances, the company failed to include the lienholder on the check.

The Bureau indicated the company failed to abide by the provisions of the policy by failing to include the lienholder on the check issued in payment of the insured's claim. The Collision check was issued solely to the named insured as the lien was satisfied as per the vehicle title. A copy of the vehicle title was provided to the Examiner at the time of the on-site examination. The violations on the following file(s) should be removed:

CPA017

The Bureau indicated the company did not include the lienholder on the check. The first party payment to the insured was issued in accordance with the company's Claim Handling Manual for "cash-outs". A "cash-out" payment may be issued if the estimate payout amount is less than or equal to \$2,500. In these cases, the payout amount was less than \$2,500. This procedure adequately protects the interests of lienholders, and does not violate the insurance policy or any provision of law. The violations on the following file(s) should be removed: CPA044, CPA078

c. In two instances, the company paid an insured more than the insured was entitled to receive under the terms of his policy.

The Bureau indicated the at-fault party was insured with USAA with \$100k coverage liability limits. The UIM coverage for the insured driver was \$100k. There is no stacking in Virginia. The Bureau contends that the only way UIM would have come into play is if the limits for UIM were higher than the liability limits, and therefore the overpayment was \$97,117.30. This claim involved a covered driver operating a non-owned automobile. The claimant carrier was USAA, which accepted 100% liability and had Bodily Injury Liability limits of \$100k/300k. The host vehicle carrier was also USAA. The host vehicle had Underinsured Motorist Liability limits of \$100k/\$300k. The company policy had Underinsured Motorist Liability limits of \$100k/\$300k. The company policy defines an "Underinsured motor vehicle" as a land motor vehicle or trailer or each type for which the sum of: 1. The limits of liability under all liability bonds or policies; or 2. All deposits of money or securities made to comply with the Virginia Financial Responsibility Law; that is "available for payment" is less than the sum of the limits of liability applicable to the "insured" for Uninsured Motorists Coverage under this policy or any other policy. The sum of the Bodily Injury Liability coverage available was \$100k. The sum of the Underinsured Motorist Liability coverage applicable to the insured was \$200k which represents the sum of USAA and Mercury Underinsured Motorist Liability coverage.

Page 10 of the American Mercury Insurance Company Virginia Private Passenger Automobile Insurance policy, which was written in accordance with Virginia Code, provides:

OTHER INSURANCE

If there is other similar insurance available under one or more policies or provisions of coverage and:

...

B. The damages are caused by an accident with an “underinsured motor vehicle”, the following priority of policies applies and any amount available for payment shall be credited against such policies in the following order of priority:

First Priority The policy applicable to the vehicle the “insured” was “occupying” at the time of the accident.

Second Priority The policy applicable to a vehicle not involved in the accident under which the “insured” is a named insured.

Third Priority The policy applicable to a vehicle not involved in the accident under which the “insured” is other than a named insured.

...

Based upon the policy, Mercury would be deemed Third Priority as the injured party was not the named insured on the Mercury policy and was not in a policy vehicle. The host vehicle carrier and claimant carrier maintained equal limits. As such, the host vehicle carrier received the credit. There was not a Second Priority carrier. Mercury’s policy applied to the loss without benefit of a credit. No overpayment occurred. The violations on the following file(s) should be removed:

CPA061

The Bureau indicated the company overpaid the tag/title fees by \$1.00. The company paid \$13.00 and should have paid \$12.00. Documentation was provided to the Examiner at the time of the on-site examination evidencing that the company’s settlement reflected \$12.00 for tag/title fees. As such, an overpayment was not made. The violations on the following file(s) should be removed:

CPA083

d. In one instance, the company waived the insured’s deductible when no waiver of deductible was applicable to the coverage on the policy.

The Bureau indicated the company waived the deductible for the insured contrary to policy provisions. The companies Policies, Procedures, and Best Practices permit the adjuster to waive the deductible upon verbal commitment of recovery from the claimant carrier. This is not a violation of law. The violations on the following file(s) should be removed:

CPA041

Other Law Violations

The Examiners found two violations of § 52-40 of the Code of Virginia. The company failed to include the fraud statement on claim forms required by the company as a condition of payment.

The Bureau indicated the company's release failed to contain the required fraud language. A copy of the "Release of All Claims and Settlement Agreement" issued to the claimant was provided to the Examiner at the time of the on-site examination. Paragraph 3 of the Release included the statutory fraud language required by law. The violations on the following file(s) should be removed:

CPA005

The Bureau indicated two violations of § 52-40 were identified although only one Review Sheet referenced this violation.

Homeowners Claims

(1) The examiners found 19 violations of 14 VAC 5-400-30. The company failed to document the claim file sufficiently to reconstruct events and/or dates that were pertinent to the claim.

These findings occurred with such frequency as to indicate a general business practice.

CHO004: Relating to documents the examiner could not access during their review was previously withdrawn by the Bureau on 06/01/2016 after copies of the documents were provided on 4/18/2016. This violation should be removed.

CHO007: relating to documents which the examiner could not open; all documents were printed and provided to the Bureau on 4/18/2016. This violation should have been withdrawn at that time. This violation should be removed.

CHO015: Examiners alleged: The documentation from Enservio does not match the figures on the letter dated 11/21/14 sent to the insured. Enservio shows depreciation of \$1,102.33, the letter sent to the insured shows depreciation of \$330.71. Mercury disagrees with the Bureau's conclusion. The adjuster made a log entry on 11/19/2014 explaining that he had amended the amount of depreciation from 50% to 15%. This is sufficient to reconstruct events. This violation should be removed.

CHO020: Examiners alleged: The claim file does not include an itemized bill from Servpro of Kingsport in the amount of \$5,163.64. Mercury disagrees. The file contains an Xactimate estimate by ServPro of Kingsport in the amount of \$5,163.64 for the necessary restoration work. Mercury's payment was based upon that estimate. This violation should be removed.

CHO025: Bureau alleged: The company failed to maintain all notes and work papers pertaining to the claim in the claim file in such detail that pertinent events and dates of such events can be reconstructed. 1) The examiner is unable to open emails under the documents tab on the company's system. 2) The claim file does not include a copy of the ALE worksheet to support the payment of \$300.00 to the insured for temporary housing. 3) The claim file does not include documentation to support the payment of \$300 to the insured for food loss. The Company disagrees, and responds as follows:

- 1) Copies of all documents were provided to the Bureau on 4/21/16.
- 2) No ALE worksheet was completed for lodging expense. The insured was offered hotel-type lodging, but requested to rather stay with her sister for a payment of \$50/day. Since this payment was negotiated rather than calculated there was no ALE worksheet prepared or needed.
- 3) There was no payment of \$300 for food loss as alleged by the Bureau, rather, there was a payment of \$150 for food loss which was based solely upon the insured's estimate since it was a reasonable and typical amount.

This violation should be removed.

CHO031: Bureau alleged: The examiner was unable to open the attached emails under the document tab in the claim file. Mercury provided copies of all documents to the Bureau on 4/21/16, and this violation should have been withdrawn at that time. This violation should be removed.

CHO035: Bureau alleged: The claim file does not include a copy of the C-178 letter in Spanish as stated in the notes of 3/17/15. Mercury does not agree that this constitutes a violation. The Spanish language copy of the letter does not appear to have been uploaded to the file. The lack of the letter does not prevent pertinent events and dates of such events from being reconstructed as stated by the Bureau as the file notes and the presence of an English language C-178 permit accurate reconstruction and dating of events. This violation should be removed.

CHO037: Bureau has never provided a copy of this review sheet for Mercury's review, therefore Mercury is unable to respond. If the Bureau cannot provide further details, this violation should be removed.

CHO040: Bureau alleged: The check in the amount of \$2,707.05 included payee names of AP and KP; there is no mention in the claim file why the name of KP was included on the check when his name is not shown on the policy Declarations. The Bureau is incorrect. KP is shown as a Named Insured on the Declarations Page of the policy. This violation should be removed.

CHO042: Bureau alleged: The claim file does not have documentation for the level of depreciation taken from the insured's personal property. The Enservio Company took 49.99% and 49.97% depreciation on items 1 and 2. Mercury disagrees with this finding. Enservio utilizes the accepted United States Federal government standard depreciation guide known as the

Joint Military Industry Depreciation Guide (“JMIDG”). A copy is available for review. For both of these items, the property inventory returned by the insured did not have ages, indicating that they did not know or could not recall the age of the items claimed. The fact that the insured could not recall the ages is a reliable indication the items were not purchased recently, but in an effort to be as fair as possible, Enservio assumed the items had approximately one half of their useful life remaining. This violation should be removed.

CHO068: Bureau alleged: None of the Outbound Correspondence is available for the examiner to review. Mercury disagrees with this finding. Mercury provided copies of all documents to the Bureau on 4/28/2016. This violation should have been withdrawn at that time. This violation should be removed.

CHO076: Bureau alleged: The examiner cannot open any of the outgoing documents. Copies of all outbound correspondence was previously sent to the examiner for review. This violation should have been withdrawn at that time. This violation should be removed.

CHO084: Bureau alleged: The examiner is unable to open any documents for this claim file. Mercury previously provided copies of all of the documents in the claim file for the examiner’s review on 06/06/2016. This violation should have been withdrawn at that time. This violation should be removed.

(2) The examiners found three violations of 14 VAC 5-400 A. The company obscured or concealed from a first party claimant, directly or by omission, benefits, coverages, or other provisions of an insurance contract that were pertinent to the claim.

CHO067: The Bureau completed two review sheets for this violation. Bureau alleged: The Company did not advise the insured regarding the policy conditions under which replacement cost could be paid. The Bureau is incorrect. The Claim Acknowledgement Letter dated 8/31/15 provided full explanation of the policy conditions under which Replacement Cost would be paid. This violation should be removed.

CHO067: The Bureau completed two review sheets for this violation. Bureau alleged: The company did not advise the insured regarding the policy conditions under which replacement cost could be paid. This is a duplicate of issue sheet of the file discussed immediately above, and should be removed.

(3) The examiners found one violation of 14 VAC 5-400-50 D. The company failed to provide reasonable assistance to an insured in the management of his claim.

CHO020: Bureau alleged: The Company failed to inform the insured of the water mitigation services available for the covered loss. According to the IA notes, he contacted a

Mercury adjuster on 12/30/14 and advised him of the need for water mitigation on a water loss occurring on 12/20/14. The adjuster did not follow up on the IA's phone call. Mercury respectfully disagrees with the Bureau's conclusion. Please review Activity Log Notes of 12/30 - 12/31/2014 which read as follows: "12/30/2014 8:17AM Contact - Received a call from the IA with Eagle Adjusting who advised that the washing machine overflowed and flooded the entire basement. He advised that no one has been out to complete any water mitigation. I gave him authorization to contact Servpro. He stated that the washing machine just kept running after the NI turned it on. There is no subro because the machine is over 10 years old. 12/30/2014 - 8:19AM - Contact attempt. Called the NI today at 11:19AM to go over claim process and next steps. Left msg on VM [REDACTED] Will obtain e-mail upon return call. 12/31/2014 - 7:57AM Contact. The NI returned my call today at 10:48AM, she advised that the adjuster has been out to the home and Servpro is there now. She stated that her sons room and the basement had the most water. Servpro is checking the walls to check to see if they are dry. The water destroyed the laminate floor in the basement. Servpro is removing the floor. There was damage to minor contents."

Moreover, Mercury attempted contact with the insured immediately upon receipt of the claim on 12/22/2014 and left a message for a return call. The insured did not respond to our messages until 12/31. Finally, Mercury issued payment for the water mitigation services on 01/09/2015. This violation should be removed.

(4) The examiners found five violations of 14 VAC 5-400-70 A. The Company failed to deny a claim or part of a claim in writing, and/or failed to keep a copy of the written denial in the claim file.

CHO051: Bureau alleged: The Company did not pay the \$389.00 for the Home Care Agreement and failed to send the insured a denial letter. Mercury disagrees with this finding. No denial was sent for the cost of the Home Care Agreement because the claim representative discussed the issue with the insured on 06/02/2015 and it was apparent that the insured recognized that agreement was a contract for services to be performed in the future and that it was not being presented for compensation as part of her claim. Since no claim was being presented, no denial was necessary. This violation should be removed.

CHO074: Bureau allegation: The Company's policy is not to pay for dry wall repair. The company excluded this cost in the estimate of repair and should have advised the insured. The company disagrees. It is not Mercury's policy not to pay for drywall repairs. Mercury pays for many thousands of dollars' worth of drywall repair and replacement each year. In this instance claim was made for soot damage from a heating unit. No damage was claimed or alleged which would have required drywall repair. Rather, the contractor proposed minor repairs, in the estimate to the insured, of unrelated damage which was not presented by the insured as part of this claim. Since the damage was neither part of the subject claim or presented as such, a written denial was unnecessary. To require otherwise would place Mercury in the impossible position of

having to expressly address and deny every element of restoration or remodel proposed by a contractor which was not necessitated by the loss at issue. This violation should be removed.

CHO084: Bureau allegation: This claim was not paid and the claim file did not include a copy of the denial letter. Mercury respectfully disagrees with the Bureau's findings. The claim was not denied because it involved wind damage caused by a tree which fell on the insured dwelling. The loss, however, was less than the insured's \$1,000 deductible. This was explained to the insured in a letter dated September 17, 2015 - a copy of which was attached to our prior response to this allegation on 05/06/2016. This violation should be removed.

(5) The examiners found 18 violations of 14 VAC 5-400-70 D. The Company failed to offer the insured an amount that was fair and reasonable as shown by the investigation of the claim or failed to pay a claim.

a. In five instances, the company failed to pay the entire claim under the insured's Dwelling Replacement Cost Coverage.

CHO012: Bureau Allegation: The Roanoke Valley Claims Service estimate dated 11/13/14 shows depreciation was taken on the following: cleaning in the amount of \$446.97, content manipulation in the amount of \$84.19 and permits and fees in the amount of \$30.00. A service does not depreciate. The Bureau contends that the company underpaid the insured by \$561.16. Mercury concedes the accuracy of this violation but notes it has already paid the \$561.16 to the insured. Mercury will now pay 6% simple interest in the amount of \$33.67.

CHO035: Bureau allegation: The Company failed to pay the total replacement cost value less deductible on this claim. The policy provision of VA HO003, Section I-Conditions D.2.d, states if the cost to repair or replace the damage is both 1) less than 5% of the amount of insurance in this policy on the building; and 2) less than \$2,500 we will settle the loss as noted in 2.a and b above whether or not actual repair or replacement is complete. The Bureau contends that this claim met these conditions, so the company underpaid the insured \$293.00. Mercury disagrees with the Bureau's conclusion. The replacement cost value of the loss was \$2,315.33. The insured's deductible is \$1,000. Mercury's payment was \$1,315.33. The payment was not reduced by depreciation. Although depreciation of \$293.00 was calculated in the claim file it was not deducted from the settlement. This violation should be removed.

CO074: Mercury does not contest this violation, however it notes Mercury paid the amount underpaid, \$3,181.22 on 4/28/16. Mercury has been advised the insured did not receive the check issued on 4/26/16 and reissued the check on 3/29/17. Mercury will now pay simple interest of \$190.87.

CHO081: Bureau's allegation: On 07/06/15 the NI called the company and advised them that a clogged downspout caused water damage to the paneling in her basement. The company advised her that "water seepage due to ground water was not a covered loss." The Bureau

contends that the damage was not due to ground water seepage but due to a clogged downspout, so the company should contact the insured to determine the cost of repairs. Mercury respectfully disagrees with the Bureau's finding. The purpose of gutters and downspouts is to divert rainwater away from the foundation area of a dwelling to prevent surface and subsurface water from exerting pressure on or seeping or leaking through a foundation. Because the downspout was clogged, the gutters and downspout failed to perform as intended and rainwater overflowed from the gutters and was deposited at the foundation area of the home where it seeped beneath the surface of the ground and exerted pressure upon and seeped and leaked through the foundation causing the complained-of damage. This loss is expressly excluded by the terms of the policy. The role of the downspout is irrelevant. Once the water hit the ground and seeped and leaked through the foundation the loss was excluded. This violation should be removed.

b. In one instance the company failed to pay the entire claim under the Personal Property Actual Cash Value (ACV) Coverage.

CHO004: Bureau allegation: The file notes indicate the insured advised the IA that there was feces coming out of her toilet. Because the dec shows coverage for Limited Fungi and OTHER MICROBES, and these terms are not defined, the company should have covered this loss without deduction for the deductible. The Bureau contends that this represents an underpayment of \$1000.00. Mercury respectfully disagrees with the Bureau's findings. The policy at issue was a renters policy which afforded coverage for personal property and for Tenants Additions and Betterments (there were none of the latter involved in the loss). Mercury paid for all of the personal property claimed by the insured on an ACV basis and subject to the \$500 deductible. The most the underpayment could have been is \$500. This violation should be removed.

c. In six instances the Company failed to pay the entire claim under the insured's Additional Living Expense Coverage.

CHO0020; CHO056: Bureau's allegation is that Mercury failed to solicit a claim from the insured for additional electrical expense they incurred to run drying equipment in the course of mitigating their water losses. The company disagrees with this finding. The mere fact that log notes do not expressly address electrical expense cannot give rise to a negative inference as to whether such a conversation took place. Increased electrical expense for mitigation machinery is typically minimal, in the order of \$1 - \$2 per day per item of equipment and many insureds would rather forego the claim than document their loss by finding electrical bills and submitting them. Contrary to the Bureau's assumption, any such expense would be under Coverage A Dwelling, rather than ALE, as the expense relates to the repair of the building. This would be a Coverage A expense requiring documentation in the form of electric bills from the same period in the prior year and few insureds elect to pursue recovery of this modest expense as they feel the required effort exceeds the likely recovery.

d. In two instances the company failed to pay the entire claim under the insured's Additional Coverages.

CHO056: Bureau's allegation: The RTEC treecare provided the company with a proposal totaling \$7,500.00 for removal of the tree which includes the crane, removal of the debris and the removal of the stump. The company did not include payment for the removal of the stump of \$1,500.00. The insured's policy does not exclude the removal of the stump. The Bureau contends that this resulted in an underpayment of \$1,500.00. Mercury disagrees with the Bureau's conclusion. The pertinent provision in Mercury's policy states: "E Additional Coverages - 1. Debris Removal. We will pay your reasonable expense for the removal of debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss. We will also pay your reasonable expense for removal of fallen trees which cause damage to covered property." It should be noted that this is not a "Trees Shrubs And Other Plants" coverage. That Named Peril coverage is a separate Additional Coverage and does not afford coverage for loss caused by wind. The Debris Removal Additional Coverages is only concerned with debris from trees insofar as fallen trees pose a barrier to the repair of covered property. The Additional Coverage for Debris Removal is designed to facilitate repairs to covered property. Under this additional coverage the reasonable expense of removing FALLEN TREES which cause damage to covered property is compensable. The object of the coverage is to prevent the expense of removing fallen trees on the repair site from posing a barrier to the swift completion of repairs. A tree "stump" is not a Fallen Tree as it has not fallen. Nor is a stump "Debris" which is defined by the Oxford Dictionary as: "1. Scattered pieces of waste or remains - 1.1 loose natural materials consisting especially of broken pieces of rock." Moreover, a stump does not pose any hindrance to the swift completion of repairs as it occupies the same place after the loss as it did prior to the loss. Since the whole purpose for the Debris Removal Additional Coverage is to facilitate the repair of covered property, and because stumps do not constitute "Debris" as defined, removal of tree stumps is not covered under this additional coverage. This violation should be removed.

e. In four instances the company failed to pay the entire claim under the insured's Personal Property Replacement Cost Coverage.

CHO009: Bureau's allegation: The insured reported \$75 cash in his wallet and \$400 in coins. The company limited the money to \$150. The policy allows for \$200 in money and coins. The Bureau contends that this represents an underpayment of \$50.00. The company disagrees with this finding. The insured's claim for cash and coins actually varied, however it was determined that he had only reported a loss of \$150.00 in Money (Coins and Paper Currency) to the police. Notifying the police is a Condition in the event of theft, and Mercury paid the loss as reported to the police. The insured did not update the Police Report. This violation should be removed.

CHO013: Bureau allegations: The claim file note of 11/25/14 states Enservio pricing was unrealistic in the pricing of the Kimber and Dan Wesson handguns. The company researched the pricing of these guns on Gunsamerica and found the prices to be \$1,349 for the Kimber and \$1,799 for the Dan Wesson. However, the company chose to use the price estimate submitted by the insured of \$1,400 and \$1,300, respectively. Since the company researched the cost of the handguns, the prices found by the company should be used to determine the cost of this covered loss. The Bureau therefore contends that the company underpaid the insured by \$156.90. Mercury respectfully disagrees with the Bureau's conclusion. One of the guns claimed (Dan Wesson) was indisputably used. The Kimber may or may not have been used. Used guns can vary substantially in price due to numerous variables, condition being a major factor. Even new guns can vary widely in price between dealers for a variety of reasons. In this claim, the insured's resident grandson had received the guns only seven months earlier, on his 21st birthday, as gifts from his father. The grandson provided the named insured the values for the guns, which we believe to have been the original purchase prices. Our pricing vendor, Enservio, returned values for the guns that the adjuster and his manager felt was inadequate to make the insured whole (\$895.05 for the Wesson and \$1,279.24 for the Kimber). The adjuster researched Replacement Cost prices for the guns and arrived at an RC of \$1,349 for the Kimber, which made the insured's claimed \$1,400 value an acceptable ACV figure ($\$1,349 \times 1.053 \text{ (tx)} = \$1,420.50$) as the gun was believed to have been new in March 2014. Research established the Replacement Cost of the Dan Wesson revolver at \$1,799.00. This revolver was used, of unknown age/history and unknowable condition. With so many unknowable factors affecting its value, the gun's recent selling price of \$1,300 was the best guide to its value and was \$400 OVER Enservio's researched value at "good" condition. Mercury feels it used the best available information concerning the value of the handgun, that being the insured's opinion. The primary determinant of the value of a used handgun is the weapon's condition and no one is in a better position to evaluate the weapon's condition than the owner. The insured was using the acquisition cost of the weapon in setting the value as it had been acquired used. This violation should be removed.

CHO051: Bureau's allegation: The claim notes of 05/30/15, the insured advised the company the computer monitor and coffee pot were not working due to a lightning strike. On 06/02/15, the insured advised the company that the wireless router and answering machine were damaged. The company paid the insured for the wireless router and answering machine in the amount of \$192.58 but did not make payment for the computer monitor or coffee pot. The Bureau contends that the company should have paid for these items. Mercury disagrees with the Bureau's conclusion. The claim representative indicated that the claim intake person listed the computer monitor and coffee pot as damaged on 5/30/15. On 6/1/15 the insured indicated the monitor was not damaged, however the internet was not working and the problem had been diagnosed as the router. On 6/2/15 the insured advised the CR that only the router and the answering machine were damaged. The CR priced these items and paid for them without deduction for depreciation.

CHO077: Bureau's allegation: On 04/07/15, Warren Cleaning & Restoration submitted a dry cleaning receipt totaling \$1,209.00 for the insured's items that were water damaged. The

company did a comparative dry cleaning estimate on 4/7/15 totaling \$1,127.29. There are no notes to why the Company did not pay the dry cleaning bill of \$1,209.00. Mercury respectfully disagrees with the Bureau's findings. Mercury's \$10,879.80 payment included \$1,209.00 for dry cleaning Warren Cleaning & Restoration submitted an estimate that included a line item for Dry Cleaning (with no invoice) and that added (incorrect amount of) sales tax on top of the invoiced amount. When Mercury requested an invoice, Warren submitted an invoice with no breakdown of items, so the handling adjuster completed a comparative estimate when the insured submitted the list of items cleaned. Please review check issued on 03/31 in the amount of \$4,709.89 and the check issued on 04/07/09 in the amount of \$6,169.91 which total \$10,879.80 (the insured's contractor invoiced amount less the overcharge of sales tax (\$3.20) on the dry cleaning invoice. This violation should be removed.

(6) The examiners found 53 violations of 38.2-510 A 1 of the Code of Virginia. The Company misrepresented pertinent facts or insurance policy provisions relating to the coverage at issue.

a. In one instance the Company allowed a vendor to issue a non-waiver agreement without sufficient support.

CHO002: Bureau's allegation: The claim file does not give the reason why a non-waiver agreement was required between Eagle Adjusting Services and the insured. Further, Eagle Adjusting Services entered into a non-waiver agreement with the insured and there is no documentation in the file giving them this authority. Mercury disagrees. This non-waiver was obtained by Eagle Adjusting Services without seeking or obtaining authorization from Mercury to do so. The adjuster apparently secured the Non-Waiver out of caution because the claim involved a backup and he was unsure of Mercury's coverage. That having been said, a Non-Waiver is merely a statement that the insurer will not be estopped from asserting valid defenses to liability and that neither the insured nor the insurer waives any rights under the policy. A non-waiver does not affect the insured's contractual rights in any way and cannot be construed to be a misrepresentation since it merely states there may be limitations in the policy which may prevent recovery, which is an indisputably true statement as there are numerous conditions precedent to recovery in the policy. This violation should be removed.

b. In two instances the company failed to properly represent coverage under the policy for mold remediation.

No dispute.

c. In 50 instances the Company failed to properly represent the replacement cost provisions of the policy.

***Only 36 violations were listed under 38.2-510 A-1/3. Mercury disputes 25 of these:**

CHO003	CHO05	CHO041	CHO006	CHO031
CHO046	CHO037	CHO042	CHO043	CHO047
CHO056	CHO058	CHO060	CHO062	CHO063
CHO065	CHO066	CHO073	CHO074	CHO077
CHO082	CHO083			

Each of the 22 above-referenced claim files contains a Claim Acknowledgement Letter (variously dated). All of the Claim Acknowledgement Letters provide a clear and accurate description of the replacement cost provisions of the policy as follows:

“REPLACEMENT COST COVERAGE (if applicable)

In most cases, when a payment is issued on your claim, it is made on an Actual Cash Value (ACV) basis. ACV is the amount it would cost to repair or replace the covered property, less a fair and reasonable deduction for depreciation based on age, wear and tear, and/or obsolescence. Depending on the type of policy you have, it may provide Replacement Cost Coverage (RCC) for certain covered property. If this coverage applies, once the property is repaired or replaced, you can recover the depreciation that is withheld from a payment issued to you.

In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts. If your receipt total exceeds the ACV payment that was issued to you, we will pay the difference between your receipt total and the ACV payment amount, but not exceeding the amount that was withheld for depreciation. Also, we may need to re-inspect your repairs.”

This is the exact language required by the Bureau in its review sheets.

CHO004: Bureau Allegation: The file does not indicate that the company adequately informed the insured the steps necessary to collect the holdback for depreciation. Mercury respectfully disagrees with the Bureau’s conclusion. Mercury’s settlement letter dated October 8, 2014, states: “Additionally, we have deducted \$552.70 in depreciation from your personal property replacement cost. The depreciation was based on the age and/or condition of the damaged property at the time of the loss. This depreciation amount is fully recoverable once you have replaced the item(s) and have submitted copies of your paid receipts or invoices for our review for consideration within 180 days of the date of the Actual Cash Value payment for the

personal property.” These are clear directions in the requisites of making claims for Replacement Cost Benefits. This violation should be removed.

CHO009: Bureau’s allegation: The company did not adequately explain replacement cost to the insured, including the time limits for replacing the items and making such a claim. Mercury respectfully disagrees with the Bureau. Log entry on 2/04/15 at 8:11a.m. indicates that the insured confirmed receipt of the settlement check and had a question concerning replacement cost benefits. The adjuster explained that once the insured replaced the claimed items, he should send in the documentation of replacement for the recoverable depreciation. By virtue of his inquiry, the insured had expressed intent to make claim on a Replacement Cost basis within the allowed timeframe. All that remained was for the insured to provide documentation of replacement. The issue of time limits for making claim was mooted by the insured’s expression of intent. This violation should be removed.

CHO022: Mercury has never received a review sheet explaining this alleged violation. It should be removed.

(7) The examiners found two violations of 38.2-510 A 3 of the Code of Virginia. The Company failed to adopt and implement reasonable standards for the prompt investigations of claims arising under insurance policies.

CHO022: Bureau allegation: Servpro advised the company on 2/4/15 they could not dry out the bathroom flooring without removing the floor. The file is silent as to whether the company contacted the insured about the supplement. Mercury does not agree that a violation occurred here. Mercury never succeeded in contacting the insured in this matter. Numerous messages were left for the insured, however he never responded. Mercury paid the undisputed amount of the loss within 20 days. Mercury was subsequently contacted by Servpro that the bathroom floor needed to be removed. Mercury advised Servpro, who was on-site and could be expected to see the insured, to have the insured provide Mercury with his contractor’s supplement for the additional work, but the insured never contacted us. Servpro never submitted an invoice for any work and we assume the insured had all necessary work done for the amount paid. We believe the company conducted a reasonable and proper investigation. This violation should be removed.

CHO068: Bureau allegation: The insured stated that the mower was a 2012 purchased at Lowes and subsequently returned to Lowes after it caught fire. The company should have inquired as to why the insured returned the mower to Lowes. The logical reason was that there was a warranty on the mower. If that was the case, the company did not owe the loss as there would not have been a loss to recover. According to the Bureau, it does not appear that the insured suffered any loss, but an investigation was not completed to confirm this. The company disagrees. The insured suffered a total loss of his mower by the peril of fire and was not compensated by Lowes for any part of his loss. The subject mower was purchased from Lowes in 2012 and was destroyed by fire on 8/24/2015. The insured returned the mower to Lowes to

determine whether there was any possibility of repair. The mower was not the subject of a warranty and repair was not possible. The receipt indicates "Visa Credit" because that is how the tractor was originally purchased. The receipt indicates "Recall Amount" because it is not an original receipt, but a re-creation or "recall" of the original receipt acquired by the insured for use in submitting his claim. The claim was properly investigated, and the insured was compensated appropriately. This violation should be removed.

(8) The examiners found three violations of 38.2-510 A 6 of the Code of Virginia. The Company failed to attempt, in good faith, to make a prompt, fair and equitable settlement of a claim in which liability was reasonably clear.

CHO037: Bureau allegation: The insured reported the loss on 3/27/15, the payment was not made until 05/20/15. This loss involved damage to personal property under a renters policy. The loss was reported on 3/27/15 and was assigned to the Independent Adjuster the same day. The IA made an appointment with the insured and inspected on 04/07/15. At that time the adjuster asked whether the insured had receipts for the damaged items and she responded she thought she did but would need to check her records. The adjuster requested that she consult her records and forward any receipts she was able to locate. Mercury followed up with the IA on 4/17/15 and 4/24/15 and was advised the IA was working with the insured on the contents. Ultimately, the insured informed the IA that she was unable to find any receipts and he proceeded with the adjustment of the claim without them having determined that the claimed values were within reason. The IA submitted his report to Mercury on 5/20/15 and Mercury paid the claim the same day. No delay was attributable to Mercury or its agent. This violation should be removed.

CHO073: Bureau allegation: The company unreasonably delayed sending payment for the claim. The company disagrees. The insured in this matter was responsible for the delay in settlement. Claim was received 11/11/2014. Loss was timely inspected and estimated and the ACV settlement was issued 12/02/14. On 12/23/14, the insured submitted two estimates for repairs which exceeded our Independent Adjuster's initial estimate. Mercury advised the insured to select the contractor who would perform the repairs and we would get an agreed price. The insured advised our adjuster that she did not wish to have the masonry work done during the winter. We heard back from the insured on 04/15 at which time she advised she was ready to proceed with work and selected the lower of the two contractor estimates. Rather than delay settlement, Mercury paid based upon the face amount of the estimate instead of seeking an agreed price with insured's contractor. Supplemental Coverage A check was issued 4/15/2015, the same day, to conclude the claim. This violation should be removed.

(9) The examiners found four violations of 38.2-510 A 10 of the Code of Virginia. The Company made a payment to the insured or beneficiary that was not accompanied by a statement setting forth the correct coverage(s) under which [sic].

Only three violations were listed for this section, and Mercury does not dispute these three violations: CHO003, CHO055, and CHO079.

(10) The examiners found 14 occurrences where the Company failed to comply with the provisions of the insurance contract.

a. In two instances the company included the lienholder on the check when the lienholder was not applicable [sic] to the loss.

Mercury concedes one of these, and disputes the finding discussed below.

CHO041: Bureau Allegation: The check in the amount of \$941.15 was made out to both the insured and mortgagee. The letters of 04/20/15 and 05/11/15 both state "If your claim exceeds \$5,000.00, any mortgage company listed for your home will be included on the payment" - this check did not exceed the \$5,000.00 limit, so the Bureau contends the mortgagee should not have been included. The mortgagee was made a payee on this check because the claim was made by and for the benefit of the mortgagee on this property in foreclosure. The named insured was no longer in the picture due to the foreclosure, so there was no reason to include the named insured. Despite repeated attempts Mercury never succeeded in establishing contact with the named insured and dealt solely with the Mortgagee in the investigation and settlement of this claim. The named insured was protected on the check, but the real party in interest was the mortgagee. It would have been disingenuous and possibly in bad faith to make the check payable solely to the named insured under these facts. This violation should be removed.

b. In eight instances the Company failed to include the lienholder on the check when applicable. [sic]

There were only 4 instances listed by the Bureau. Mercury concedes one of these, and disputes the others discussed below.

CHO015: Bureau's allegation: The Company failed to include the mortgagee name on the checks for coverage A. As a matter of policy for the convenience of its customers, Mercury does not include mortgagees on Homeowners Claims Coverage A payments in a net amount of less than \$5,000. Mercury assumes the risk on these claims that the repairs will not be completed and that the mortgagee will demand payment for impairment of their lien. In the subject case, the initial Coverage A payment was \$4,310.15, below the \$5,000 threshold. The second payment of \$1,466.97 reflected reimbursement for replacement cost benefits that are not payable until incurred by the insured. This payment raised the amount above the threshold, however as the repairs had been completed before this payment could be claimed, the mortgagee's lien was no longer impaired and the mortgagee no longer required protection on the check. No violation occurred here.

CHO026: Bureau allegation: The Company failed to abide by the provisions of the policy by failing to include the lienholder on the check issued in payment of the insured's claim. The

letter of 01/21/15 specifies if your claim exceeds \$5,000.00, any mortgage company listed for your home will be included on the payment. Additionally, the provisions of the insured's policy states "...any loss payable under Coverage A or B will be paid to the mortgagee and you..." The Company does not agree that this was a violation. In order to provide the best possible customer service, it is Mercury's policy not to include mortgagees on checks issued to insureds if the claim is less than \$5,000. Mercury is willing to assume the risk that repairs will not be completed on these claims and that they will have to satisfy claims of the mortgagees for impairment of their liens. In the subject claim, the checks made payable directly to ServPro were for remediation work that was already completed and found to be satisfactory. Once paid for, that completed work did not represent a potential impairment of the mortgagee's lien. The check to the insured for structural repairs in the amount of \$4,499.55 was below the \$5,000 threshold, so the mortgagee was not included. *It should be noted that Mercury assumes the risk of liability to the lienholder for an impaired lien in order to provide a better claim experience for its Virginia insureds.*

CHO074: Bureau allegation: A payment should have been made for \$4,226.00 with the mortgage company name on it. The company advised after the examination began that they do not include the mortgagee on checks under \$5000. However, the question was not resolved prior to the start of the examination. As discussed above, it is Mercury's policy not to include mortgagees on checks issued to insureds if the claim is less than \$5,000. Mercury is willing to assume the risk that repairs will not be completed on these claims and that they will have to satisfy claims of the mortgagees for impairment of their liens. In the subject claim, the check to the insured for structural repairs in the amount of \$4,226.00 was below the \$5,000 threshold, so the mortgagee was not included. *It should be noted that Mercury assumes the risk of liability to the lienholder for an impaired lien in order to provide a better claim experience for its Virginia insureds.*

- c. In four instances the Company paid an insured more than he/she was entitled to receive under the terms of the policy.***

Mercury concedes one instance and disputes the others discussed below.

CHO052: Bureau allegation: The claim note of 06/02/15 indicates the insured advised the company that the toilet backup in the basement due to tree roots in the drain lines. The First Report from Capstone ISG dated 06/12/15 advised the company the main drain line under the foundation of the home broke causing a backup into the bathroom and drain due to tree roots. The insured purchased the Water Back Up and Sump Discharge or Overflow endorsement with a \$5,000 limit that covers water which backs up through sewers and drains. The Bureau contends that the company overpaid this claim by \$12,478.95. Mercury does not consider claims arising from "on-premises clogs" to be excluded from coverage under Section I of the policy. Rather, it considers losses arising from "on-premises clogs" to be covered up to the limit of liability for the class of property claimed. Damage resulting from water from *outside* the residence premises, e.g., resulting from a clog in the municipal sewage system off the residence premises, is

considered to be an excluded cause of loss. Purchase of the Water Back Up and Sump Discharge Or Overflow Endorsement HO298 VA affords protection for the latter class of losses in an amount selected by the insured, in the subject policy that amount was \$5,000, but the coverage was not involved in the loss. The company did not overpay on this claim.

CHO077: Bureau's allegation: On 03/23/15, Warren Cleaning & Restoration sent in a revised bill totaling \$10,816.35 (dry cleaning removed from the total). The company sent two checks made out to the insured and Warren Cleaning & Restoration totaling \$10,879.80. There are no notes in the claim file as to why the company increased the total payment by \$63.45. The Bureau contends this resulted in an overpayment of \$63.45. Mercury respectfully disagrees with the Bureau's finding. Warren Cleaning and Restoration's ES (Mitigation) estimate was \$10,883.00, not \$10,816.35. The \$3.20 difference is due to a tax miscalculation ($10883 - 3.20 = 10,879.80$) by Warren that was corrected by Mercury.

CHO079: Bureau's allegation: The company did not apply the insured's deductible to the loss payment. Mercury respectfully disagrees with the Bureau's findings. Dwelling ACV....\$6,948.43. Emergency Services. Bill....\$4,900.97 (ES bill was negotiated by Water Mitigation Dept.). Sub Total \$12,239.00. Less Deductible....\$5,000.00. Total Amt Due....\$7,239.00 (equals exact amount in summary). ***ES is included in the total settlement for dwelling damages and paid under indemnity. Amount paid reflects \$5,000.00 deductible. This violation should be removed.

REVIEW OF FORMS

Automobile Policy Forms

POLICY FORMS USED DURING THE EXAMINATION PERIOD

(1) The examiners found two violations of § 38.2-2214 of the Code of Virginia. The company did not have available for use the rate classification statement.

FPA022: The Company acknowledges that a rate classification statement was not available for new policies written in Mercury Casualty Company, however the Company did not write any new business policies in Mercury Casualty Company during the examination period. The Company has transitioned all Mercury Casualty Company policies to American Mercury Insurance Company. A rate classification statement is available for American Mercury Insurance Company.

FPA023: The Company filed and made available a rate classification statement in compliance with § 38.2-2214.

(2) The examiners found four violations of § 38.2-2220 of the Code of Virginia. The company used a version of a standard automobile form that was not in the precise language filed and adopted for use by the Bureau.

FPA019: The Company will update the language in form PP1358 for American Mercury Insurance Company. The Company no longer renews policies in Mercury Casualty Company.

FPA021: The Company will update the language in form PP1363 for American Mercury Insurance Company. The Company no longer renews policies in Mercury Casualty Company.

(3) *The examiners found four violations of § 38.2-2223 of the Code of Virginia.*

a. In two instances, the company used a version of a form filed as a broadening of the standard forms that was not in the precise language as approved by the Bureau.

FPA025: Form U236 was never filed or used. This form was provided to the Bureau in error, however it was never applied to any policy.

FPA031: Form PP0199 applied to Mercury Casualty Company. The Company no longer renews policies in this Company.

b. In two instance, the company filed and received approval of a broadening of the standard forms but failed to use the form in accordance with the approved filing.

FPA030 FPA031

The Company does not dispute this finding. Since moving to our new system, we have updated the language on the cancellation provision, and we will make sure the new language is filed with our next form filing.

REVIEW OF THE POLICY ISSUANCE PROCESS

Homeowners Policies

NEW BUSINESS POLCIES

The examiners found three violations of 38.2-305 B: failed to provide “Important Information Regarding your Insurance” notice.

The Company agrees. We are correcting our systems to ensure the notice is contained in every new business packet.

RENEWAL BUSINESS POLICIES

(1) The examiners found three violations of § 38.2-305 B of the Code of Virginia. The company failed to provide the “Important Information Regarding Your Insurance” notice.

The Company agrees. We are correcting our systems to ensure the notice is contained in every renewal business packet.

(2) The examiners found one violation of § 38.2-2120 of the Code of Virginia. The company failed to provide the notice offering the insured the option of purchasing coverage cause by water that backs up through sewers or drains.

The Company agrees. We are correcting our systems to ensure the notice is contained in every renewal business packet.

(3) The examiners found three violations of § 38.2-2125 of the Code of Virginia. The company failed to provide the notice advising the insured that the policy does not include loss due to Flood.

The Company agrees. We are correcting our systems to ensure the notice is contained in every renewal business packet.

(4) The examiners found three violation of § 38.2-2129 of the Code of Virginia. The company failed to provide the notice advising the insured that the policy does not include loss due to Earthquake.

The Company agrees. We are correcting our systems to ensure the notice is contained in every renewal business packet.

REVIEW OF STATUTORY NOTICES

General Statutory Notices

The examiners found two violations of § 38.2-604 B of the Code of Virginia. The company’s Notice of Information Collection and Disclosure Practices did not include all of the information required by this statute.

The Company believes that its Notice contains all the information required by the statute, but the Company concedes that it was not filed with the Bureau. The Company will submit a revised form to ensure compliance with Section 38.2-604B.

Statutory Vehicle Notices

(1) The examiners found two violations of § 38.2-517 A of the Code of Virginia. The company failed to have available for use a Glass Script disclosing the use of a Third Party Vendor.

The Company disagrees that any violation occurred here. The statute does not require that a “script” be maintained, and the company does comply by making the required disclosure at the time of referral. When reporting a vehicle glass or windshield only claim via our Customer Service number (1-800-503-3724), the caller is instructed to press 1. After pressing 1, the caller is connected to All Star Glass Services which identifies themselves as “All Star Glass Services Auto Glass Administrators for Mercury Insurance.” The disclosure is thus available for review by examiners.

(2) The examiners found one violation of § 38.2-1905 A of the Code of Virginia. The company failed to include all of the information required by the statute in its Point Surcharge Notice.

NSV020: The Company respectfully disagrees. The Bureau indicated that the Company failed to list the name of the driver involved in the accident. Section 38.2-1905 A requires that Company send the notice but does not require that the company list the name of the driver in the loss. The notice provided by the Company is compliant with § 38.2-1905 A, and no violation occurred here.

**CORRECTIVE ACTION PLAN - Rating & Underwriting
Virginia Market Conduct Examination**

Project Plan Status	Date Plan Updated
Plan Initiated	3/30/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Correct the errors that caused the underpayments and overpayments, and send the amount of the overpayment to insureds.	Jeremy Baczkiewicz	1	3/28/2017	Completed	New Business: RHO008, RHO016, RHO030, RHO048, RHO050 are in dispute, RHO018 - we have sent a check with interest. RHO27 we have a document from the examiners indicating this should be an undercharge of \$25 due to the expense constant and no documentation indicating an overcharge due a refund to the Insured. RHO041 - our documentation from the examiners indicate an alleged undercharge of \$125 with no additional documentation to indicate any overcharge due the customer. Renewals: RHO060, RHO063 are in dispute. RHO064, RHO071, RHO072, RHO098, RHO116 were refunded with interest. System Fixes - Any systems changes required will be completed in the September Release.
Include six percent (6%) simple interest in the amount paid to the insureds and claimants.	Jeremy Baczkiewicz	2	3/28/2017	Completed.	see above.
Complete and submit to the Bureau the enclosed file titled "Rating Overcharges Cited During the Examination". By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.	Jeremy Baczkiewicz	3	Sent with our Examination Response	Completed	The refunds indicated above in the comments to #1 have been completed. A check has been sent for these items along with the 6% interest. All other alleged overcharges cited by the Department were respectfully challenged.
Properly represent the benefits, coverages, advantages, and conditions of the policy by listing forms and discounts applicable to the policy on the declarations page.	Jeremy Baczkiewicz	4	3/28/2017	Partially Completed	All remaining corrections to the system are scheduled to be implemented in the September release.
Provide the Insured with a written notice of an Adverse Underwriting Decision.	Jeremy Baczkiewicz	5	3/28/2017	Completed	
File with the commission all rates and supplementary rate information, including fees	Jeremy Baczkiewicz	6	3/28/2017	Complete	Rate/rule filing has been filed and closed with effective date of April 21st 2017. (State tr number:012; SERFF number: MERY-130965926)
Use the rules rates on file with the Bureau. Particular attention should be given to the use of filed discounts, surcharges, points for accidents and convictions, symbols, territories, tier eligibility, increased limits factor, base and/or final rates, filed fees, construction type and public protection class.	Jeremy Baczkiewicz	7	3/28/2017	Complete	Corrections have been completed with respect to the undisputed items.
Update the Insureds credit information at least once in a three year period.	Jeremy Baczkiewicz	8	3/28/2017	Partially Completed	Systems changes required will be completed in the September Release.

**CORRECTIVE ACTION PLAN -
Terminations
Virginia Market Conduct Examination**

Project Plan Status	Date Plan Updated
Plan Initiated	3/30/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Correct the errors that caused the underpayments and overpayments, and send the amount of the overpayment to insureds.	Kevin Bailey	1	3/30/2017	Complete	PPA: All errors that caused over and under payments have been corrected.
Include six percent (6%) simple interest in the amount paid to the insureds and claimants.	Kevin Bailey	2	3/30/2017	Complete	PPA: Six percent simple interest will be included on all refunds.
Complete and submit to the Bureau the enclosed file titled "Termination Overcharges Cited During the Examination". By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.	Kevin Bailey	3	3/30/2017	In Progress	PPA: TPA039 The amount the department indicates was overcharged was never actually paid by the insured. TPA025 is disputed. TPA043 TPA050 are being refunded with interest.
Timely file proof of financial responsibility with the Department of Motor Vehicles.	Kevin Bailey	4	3/30/2017	Complete	PPA: The Company disputes that proof of financial responsibility was not provided in a timely manner. The company provides proof of financial responsibility in accordance with Virginia law.
Provide billing statements that clearly state the effect of the payment on the cancellation of the coverage.	Jeremy Baczkiewicz	5			This item is in dispute. The Bureau asserts that we cannot attach a bill requesting the past due premium along with a non-payment cancellation notice that lists monies that would become due if the policy was reinstated, but no authority for that position has been offered.
Written Notice of an AUD	Kevin Bailey	6	7/19/2015	Complete	PPA: The company implemented a new policywriting system in July 2015 and sends Adverse Underwriting Decision Notices in accordance with Virginia law.
Calculate Return premium according to the filed rules and provisions.	HO: Jeremy Baczkiewicz PPA:Kevin Bailey	7	3/28/2017	Complete	HO: All known defects have been submitted for repair. PPA: The company implemented a new policywriting system in July 2015 and calculates return premium in accordance with filed rules and provisions.
Provide coverage to the Named Insured and any other person using or responsible for the use of the motor vehicle as required by statute.	Kevin Bailey	8	7/19/2015	Complete	PPA: While the company maintains that all forms in question utilized during the examination period provided coverage for the Named Insured and any person using or responsible for the use of the motor vehicle as required by statute, the forms in question have been replaced in July 2015 with forms that no longer contain the language to which the department objects.
Obtain and retain valid proof of mailing the cancellation notice to the Insured and lienholder.	HO: Jeremy Baczkiewicz PPA:Kevin Bailey	9	3/28/2017	Complete	This was disputed as to the lienholder notices not being in compliance as well as some of the proof of mailing not being able to be read. Current process is compliant.
Cancel a policy insuring an owner-occupied dwelling when the notice is mailed after the 89th day of coverage only for those reasons permitted by statute.	Jeremy Baczkiewicz	10	1/1/2015	Complete	The offending employee no longer works for the company.
Send the cancellation notice for an owner occupied dwelling at least 30 days before the effective date of cancellation when it is mailed after the 89th day.		11	3/30/2017	Complete	This has been completed. The system will correctly calculate the number of days.
Cancel a motor vehicle policy on for the reasons permitted by statute	Kevin Bailey	12	3/30/2017	Complete	The company only cancels policies for reasons permitted by statute. The company's new policy writing system, deployed in July 2015 provides a list of approved reasons for which a policy may be cancelled.
Send the cancellation notice at least 45 days before the effective date of cancellation when the notice on a private passenger automobile policy is mailed after the 59th day of coverage	Kevin Bailey	13	7/19/2015	Complete	The company implemented a new policywriting system in July 2015 sends the cancellation notice at least 45 days before the effective date of cancellation when the notice on a private passenger automobile policy is mailed after the 59th day of coverage
Provide proper notice of cancellation or refusal to renew to the Insured and lienholder.	HO: Jeremy Baczkiewicz PPA:Kevin Bailey	14	3/28/2017	Complete	We provide proper notice to the Insured and lienholder

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Send cancellation notices at least 15 days before the effective date of cancellation when a private passenger automobile policy is cancelled for nonpayment of premium	Kevin Bailey	15	7/19/2015	Complete	The company implemented a new policywriting system in July 2015 and sends cancellation notices at least 15 days before the effective date of cancellation when a private passenger automobile policy is cancelled for nonpayment of premium
Send the notice of cancellation to the address listed on the policy		16			Examiners did not provide a corresponding review sheet demonstrating that we ever sent a notice to an incorrect address. Defect, if any, is unknown, and based on current information the current process is compliant.
Obtain advance written notice when the insured requests cancellation of the policy.	Kevin Bailey	17	3/30/2017	Complete	The company will obtain insured's request to cancel the policy in compliance with applicable Virginia law and the policy issued by the Company.

**CORRECTIVE ACTION
PLAN
Virginia Market Conduct Examination**

Project Plan Status	Date Plan Updated
Plan Initiated	3/28/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Correct the errors that caused the underpayments and overpayments, and send the amount of the underpayment to insureds and claimants.	Laura Wade	1	3/8/2017	Completed	All but one of the Auto Claims underpayments mentioned by the Department were respectfully challenged. The one underpayment involved the use of improper sales tax. A check has been sent for this underpayment along with the 6% interest. This check was for \$2.98. All undisputed underpayments for Property (HO) claims have been issued. Payments were inclusive of 6% simple interest.
Include six percent (6%) simple interest in the amount paid to the insureds and claimants.	Laura Wade	2	3/8/2017	Completed.	see above.
Complete and submit to the Bureau the enclosed file titled "Claims Underpayments Cited During the Examination". By returning the completed file to the Bureau, the companies acknowledge that they have paid the underpayments listed in the file.	Laura Wade	3	Sent with our Examination Response	Completed	Auto Claims had 1 underpayment involving improper sales tax. A check has been sent for this underpayment along with the 6% interest. All other underpayments cited by the Department were respectfully challenged. Property Claims (HO) had 6 underpayments which it did not dispute or disputed as to amount only. All conceded underpayments have been paid in full inclusive of 6% simple interest.

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Document claim files so that all events and dates pertinent to the claim can be reconstructed.	Laura Wade	4	n/a	Completed	<p>While the Department cited 49 violations related to Proper documentation (14VAC5400-30/1), the Company respectfully challenged all but 4 of these violations. Documentation noted such as repair estimates, rental bills, medical bills, etc were housed either in our various supporting systems with access provided to the Department at the time of the Examination or were within the Claims files themselves. The Examiners at the time of the Examination requested that we access our systems and retrieve the documents for them which we did.</p> <p>Property (HO) Claims: While the Bureau cited 19 violations related to proper file documentation under 14 VAC 5400-30/1, Mercury disputed 12 alleged violations, conceded 6 violations and did not receive a review sheet for CHO037. Of the conceded violations, all were attributable to the implementation of a new electronic claims system and systems training has rectified the issues.</p>
Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be given to deductibles, rental benefits under UMPD and Transportation Expense coverage, and Medical Expense coverage.	Diane Braun	5		Training to be conducted in 4/2017	The staff previously utilized a Company form C-181 to note coverages that were addressed. Many of the Claim file notes indicated the C-181 was completed. Going forward, the staff will be instructed on ensuring that their notes clearly indicate when coverages are addressed.
Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim, and pay the claim in accordance with the insured's policy provisions.	Laura Wade	6	At time of Examination	Complete	<p>Many of the violations cited in this section were respectfully challenged. However, some of these violations related to proper sales tax on our Total Loss settlements. Moving forward, Material Damage Department will be alerting the Total Loss Department of any changes to VA sales tax. Furthermore, the Examiners issued violations for our handling of our UMPD claims. While we were paying the correct amounts on our UMPD claims, the Department requires that in those instances where there is Collision as well as UMPD coverage, that we pay the claim under Collision and then pay any difference in the deductible amounts under the UMPD coverage. Corrective measures were taken at the time of the Examination.</p> <p>Property (HO) Claims: 11 Of 18 cited violations of 14 VAC 5-400-70-D are disputed. Several violations related to the Limited Fungi Endorsement which no longer appears on VA policies. The remaining issues have been addressed by continuing training.</p>

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants.	Laura Wade	7		Open	Statutory Requirement Training to occur in April 2017 for the NJ Casualty staff.
Properly represent pertinent facts or insurance provisions relating to coverages at issue.	Laura Wade	8			Auto Claims: Only 2 violations were noted under this topic and both were respectfully challenged. Property (HO) Claims. In several instances, early claims subject of this review employed settlement letters which did not conform to VA law relating to claiming Replacement Cost Benefits. This has been corrected by implementation of an automated Claims Correspondence system which automatically incorporates correct language.
Disclose the required aftermarket parts notice to the vehicle owner on the repair or in the separate document.	Lee Frazer & Edgar Dejesus	9	3/1/2017	Complete	All Mitchell profiles have been updated to include the Statutory language to ensure compliance moving forward.

CORRECTIVE ACTION PLAN - Forms

Virginia Market Conduct Examination

Forms

Project Plan Status	Date Plan Updated
Plan Initiated	3/30/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Develop a rate classification statement to comply with section 38.2-2214 of the Code of Virginia	Sarah Thompson	1	7/19/2015	Completed	A rate classification statement in compliance with section 38.2-2214 of the Code of Virginia is available. The company deployed a new policy writing system in July 2015 including the rate classification statement
Use the automobile standard forms in the precise language as filed and approved by the bureau.	Sarah Thompson	2	3/30/2017	In progress	We will update and file this form to make sure the wording complies with the regulation.
Use the forms as boradenings to the automobile standard forms in the precise language filed and approved by the Bureau		3		Completed	Language has been updated on our new system.

**CORRECTIVE ACTION PLAN -
Policy Issuance**

Virginia Market Conduct Examination

Forms

Project Plan Status	Date Plan Updated
Plan Initiated	3/30/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Provide the insured the Important Information Regarding Your Insurance notice with all new homeowners policies.	Sarah Thompson	1	7/19/2015	Completed	The Company will program its system to ensure that notices are included.

**CORRECTIVE ACTION PLAN -
Statutory Notices**

Virginia Market Conduct Examination

Forms

Project Plan Status	Date Plan Updated
Plan Initiated	3/30/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Amend the long form Notice of Information Collection and Disclosure Practices to comply with § 38.2-604 B of the Code of Virginia.	Sarah Thompson	1	7/19/2015	Completed	The Company will file a revised form to comply with this requirement.

CORRECTIVE ACTION PLAN

Virginia Market Conduct Examination

Licensing & Appointment

Project Plan Status	Date Plan Updated
Plan Initiated	3/31/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Appoint Agents within 30 days of application	Tish Faulkner	1	8/1/2016	Completed	This has been corrected. Mercury now utilizes an agency management and commissioning system that's automated the application process and has streamlined the time frame. When the agent's completed application is received, Mercury runs additional third party reports to further validate the appointment. Our system appoints agents automatically as part of the application approval process. Our target it to have applications completed and approved within 30 days of receipt.
Pay Commissions only to agencies that are appointed with the Company	Tish Faulkner	2	8/1/2016	Completed	This has been corrected. Mercury's agency management and commissioning system now validates paying commission checks against agencies that are no longer appointed with Mercury. Based on state guidelines and requirements, we pay only to the appropriate parties.

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Accept Business only from agents and agencies that have current licenses from Commonwealth of Virginia	Tish Faulkner	3	8/1/2016	Completed	This has been corrected. We only allow agencies that have a proper appointment with Mercury to submit business to us, which would mean that they have a current license as well. We now have an integration with NIPR that validates the licenses on a routine basis. On a monthly basis, our administrative team reviews the license renewals to ensure that all agent license appointments are still required and valid.

Brandon Ayers

From: Joseph B Miller <JBMiller@MercuryInsurance.com>
Sent: Wednesday, April 05, 2017 2:55 PM
To: Joy Morton
Cc: Laura Wade; Karen Gerber
Subject: RE: Mercury Companies Response to Preliminary Report

Thanks. We are compiling the additional documents and will forward to the Bureau within the two-week period you have extended.

From: Joy Morton [mailto:Joy.Morton@scc.virginia.gov]
Sent: Monday, April 03, 2017 1:06 PM
To: Joseph B Miller
Cc: Laura Wade ; Karen Gerber
Subject: RE: Mercury Companies Response to Preliminary Report

Mr. Miller:

We received Mercury's response to the Preliminary Report. If several places throughout the report you have stated that the company provided missing information from the files under review. If the items were still in the report when the report was sent to the company we have not received the missing information. The company has not included any supporting documentation with its response. For reconsideration of any violations in the report the supporting documentation must be provided.

If there are receipts, checks claim file notes or any other file information the company would like us to consider that information must be submitted. We will allow the company an additional 2 weeks to provide supporting documents for our review. If we have not received any supplemental information we will review the response as is and move forward with the understanding that the company has nothing additional for our review or consideration.

Please feel free to contact me if you have any questions or need assistance.

Joy Morton, AMCM
Manager
P & C Market Conduct Section
Phone - (804)371-9540
Fax - (804) 371-9396
email - joy.morton@scc.virginia.gov

From: Joseph B Miller [mailto:JBMiller@MercuryInsurance.com]
Sent: Friday, March 31, 2017 5:52 PM
To: Joy Morton
Cc: Laura Wade
Subject: Mercury Companies Response to Preliminary Report

Dear Ms. Morton,

Attached please find a cover letter and narrative response, along with two Excel files: a corrective action plan, and a completed version of the Bureau's file regarding overcharges and undercharges. We are sending by mail today.

Please let us know if you need anything else.

Thanks,

Joseph B. Miller
Corporate Counsel
323-857-4958



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Karen Gerber

From: Laura Wade <LWade@MercuryInsurance.com>
Sent: Thursday, April 13, 2017 9:44 AM
To: Joy Morton
Cc: Karen Gerber
Subject: RE: Mercury Companies Response to Preliminary Report

Good morning Ms. Morton,

I will be shipping the additional documentation in support of our response overnight. I would like to confirm the mailing address.

Is it:

Bureau of Insurance
Tyler Building
1300 E. Main St.
Richmond, Virginia 23219

Thank you.

Sincerely,

Laura A. Wade
Divisional Manager-Claims



P.O. BOX 5919 Bridgewater, NJ 08807 (800) 987-2032 ext 61894

From: Joy Morton [mailto:Joy.Morton@scc.virginia.gov]
Sent: Monday, April 03, 2017 4:06 PM
To: Joseph B Miller <JBMiller@MercuryInsurance.com>
Cc: Laura Wade <LWade@MercuryInsurance.com>; Karen Gerber <Karen.Gerber@scc.virginia.gov>
Subject: RE: Mercury Companies Response to Preliminary Report

Mr. Miller:

We received Mercury's response to the Preliminary Report. If several places throughout the report you have stated that the company provided missing information from the files under review. If the items were still in the report when the report was sent to the company we have not received the missing information. The company has not included any supporting documentation with its response. For reconsideration of any violations in the report the supporting documentation must be provided.

If there are receipts, checks claim file notes or any other file information the company would like us to consider that information must be submitted. We will allow the company an additional 2 weeks to provide supporting documents for our review. If we have not received any supplemental information we will review the response as is and move forward with the understanding that the company has nothing additional for our review or consideration.

Please feel free to contact me if you have any questions or need assistance.

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
TELEPHONE: (804) 371-9741
<http://www.scc.virginia.gov/division/boi>

June 22, 2017

VIA UPS 2nd DAY DELIVERY

Laura A. Wade
Division Manager-Claims
Mercury Insurance
686 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807

Re: Market Conduct Examination
Mercury Casualty Company (NAIC# 11908)
American Mercury Insurance Company (NAIC# 16810)
Examination Period: September 1, 2014 – August 31, 2015

Dear Ms. Wade,

The Bureau of Insurance (Bureau) has reviewed the April 13, 2017, response to the Preliminary Market Conduct Report (Report) of Mercury Casualty Company and American Mercury Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

The Company has indicated throughout its response that various documents and supporting evidence had been previously provided to the Bureau either via the on-site review or subsequent communication. The Bureau received a box of approximately 2000 loose paper documents from the Company after the completion of the on-site examination. These documents were in no order and had no identifiers connecting them to our sample (claims, rating, terminations). The Bureau immediately returned these documents to the Company on June 30, 2016. The Bureau requested that the Company identify the BOI reference number that related to each document and return the documents to the Bureau in a manner in which they could be identified. The Company did not respond to this request. The Company's April 13, 2017 response to the Preliminary Report has now included identifiable documents through its exhibits.

PART ONE – EXAMINERS’ OBSERVATIONS

Automobile New Business Rating

- (3a) The violation for RPA008 remains in the Report. The Company incorrectly applied the Mature Driver discount to the excess vehicle instead of vehicle 2. The Bureau acknowledges that the Company recognized the insured was not eligible for the Mature Driver discount, but did not remove the discount because the cancellation notice was already sent to the insured per the underwriting notes.

After further review, the violation for RPA023 has been withdrawn from the Report.

- (3b) The violation for RPA045 remains in the Report. The section of the application designated for convictions and accidents does not include any information. Violations do not drive surcharges, convictions are necessary to apply surcharges. The incident in question does not include a conviction. The Company responded that it should be able to surcharge for violations that are disclosed by the insured on the application without the insured being convicted of the violations because the Company is entitled to rely on information expressly provided by the insured. The Remarks Section of the Application where the insureds can disclose convictions and accidents is blank, so the insured did not disclose the January 10, 2013 violation. The January 10, 2013 violation is listed in the MVR Activity Section as “Driver No. 1, January 10, 2013 Minor Violation Y” and per the Driving Record Activity screen, this violation was manually entered. The Company cannot surcharge the insured for the January 10, 2013 violation because the conviction date and the specific violation are unknown.

After further review the violation for RPA059 has been withdrawn from the Report. The Company has acknowledged the second violation. The Bureau has redacted the insured’s name from the Company’s response. Please keep in mind the Company should not include any personally identifiable information in its response.

- (3d) The violations for RPA009, RPA010, RPA021, RPA023, RPA024, RPA038, and RPA057 remain in the Report. The Company has acknowledged that the application for insurance did not clearly record the limits or length of time with the current/previous insurance carrier. Further, the Company rated the policies using information that was different than the information in the Current Carrier Report.
- (3e) The violations for RPA006, RPA008, RPA023, RPA034, and RPA044 remain in the Report. Insurers are required to issue policies in accordance with their filed rate and supplementary rate information pursuant to § 38.2-1906 of the Code of Virginia. The examiners rated these policies with the purchase date

specified in the application, instead of the New or Used field that appeared to have defaulted to "New" regardless of the purchase date.

A violation has been added for RPA050 based upon the enclosed review sheet. For reconsideration, please provide a copy of the revised application that captures the vehicle ownership information.

The violations for RPA065 and RPA069 remain in the Report. The Company filed rates with a proposed "policy effective date". If it is the Company's desire to use the rates applicable on the date the policy was written the filing should be made for "policies *written* on or after the date. The Company should only issue policies with the rates filed for use on or after the policy effective date. The Company cannot continue to issue policies with superseded rates. The Company must develop a Corrective Action Plan where the system only issues policies with filed rates.

After further review, the violation for RPA074 has been withdrawn from the Report. The policy file did not provide any dates to indicate the 1995 vehicle was not purchased new.

- (4) The violations for RPA006, RPA013, RPA024, RPA026, RPA029, RPA032, RPA036, RPA037, RPA039, RPA040, RPA041, RPA050, RPA057, RPA059, RPA060, and RPA068 remain in the Report. The Company responded that it did not exclude any drivers. However, the statement on the declarations page and application that "persons listed below DO NOT DRIVE and therefore will not be given permission to drive any of the policy vehicles" is misleading. The statement implies that the persons listed in the Non-Drivers section cannot drive the insured's vehicles. The Bureau has only cited the Declarations pages/applications that list names in the Non-Drivers section.

Virginia is a permissive use state and the insured is allowed to grant permission to any operator. The Company cannot exclude any drivers, or deny claims based upon permissive use. The Company was cited in both the 2006 and 2009 Market Conduct Examinations for using similar language. The Company agreed to remove all references to excluded drivers in its Virginia systems in its 2006 Corrective Action Plan, but similar language was cited again on the declarations page in the 2009 examination and now for a third time in this examination. The Company now asserts that the above language has been removed from both its declarations page and applications. Please provide a copy of the current declaration page and application for American Mercury Insurance Company and Mercury Casualty Company.

Automobile Renewal Business Rating

- (1) These violations remain in the Report. The Company should only list forms and endorsements on the declarations page that are applicable to the policy. Since the insured did not buy the Medical Expense and Income Loss Benefits coverages, the Company should not have listed the endorsements on the

declarations page. The Company should provide a copy of the revised declarations page for a policy that does not have Medical Expense and/or Income Loss Benefits coverages.

- (3a) The violation for RPA096 remains in the Report. This violation pertains to the discounts and surcharges. The Company responded to a tier violation. The Company has acknowledged that it failed to maintain accurate prior carrier information.

The violation for RPA151 concerned the incorrect application of the 3 Year Accident and Violation Free Discount. The Company's response acknowledged an anti-theft discount violation that did not pertain to RPA151, it only pertained to RPA140.

A violation for RPA151 has been added to the Report. The Company applied the Multi Policy discount when the policy file did not indicate the insured had an eligible homeowner policy. For reconsideration, the Company should provide documentation of the insured's homeowner policy that was eligible for this ten percent (10%) discount.

- (3b) The violation for RPA140 remains in the Report. The policy file obtained by the examiner only listed convictions prior to 2011, which were outside of the experience period for surcharges. For reconsideration, the Company should provide the documentation referenced in its Response. Unfortunately, the screen print provided with the Company's second review sheet response of September 2016 was not legible.

The Company should complete an internal audit and determine the number of policies affected by this system issue and report this information to the Bureau.

- (3d) After further review, the violation for RPA151 has been withdrawn from the Report. The Company provided the requested proof of prior insurance documentation showing Bodily Injury limits of \$25,000/50,000. The Report has been renumbered to reflect this change. There are now no tier violations.

- (3e) A violation for RPA151 has been added to the Report. The Company incorrectly applied the "Used" Vehicle Ownership factor when the 2004 Dodge Ram 2500 was purchased on September 8, 2004.

- (4) The violations for RPA136 and RPA141 remain in the Report. The Company responded that it did not exclude any drivers. However, the statement on the declarations page and application that "persons listed below DO NOT DRIVE and therefore will not be given permission to drive any of the policy vehicles" is misleading. The statement implies that the persons listed in the Non-Drivers section cannot drive the insured's vehicles. The Bureau has only cited the Declarations pages/applications that list names in the Non-Drivers section.

Virginia is a permissive use state, so the insured can give anyone permission to drive his/her vehicles, and the Company cannot exclude any drivers, or deny claims based upon permissive use. The Company was cited in both the 2006 and 2009 Market Conduct Examinations for using similar language. The Company agreed to remove all references to excluded drivers in its Virginia systems in its 2006 Corrective Action Plan, but similar language was cited again on the Declarations page in the 2009 examination.

This is the third examination by the Bureau in which the Company has been cited for using similar language. The Company now asserts that the above language has been removed from both its Declarations page and applications. Please provide a copy of the current Declarations page and application for American Mercury Insurance Company and Mercury Casualty Company.

Homeowners New Business Rating

- (3b) The violation for RHO008 remains in the Report. The CLUE report provided by the Company indicates that the catastrophe claim that occurred on April 16, 2011 was handled and paid under a Business Owners Policy (BOP). A surcharge for a claim under the BOP policy should not be applied to the personal homeowner's policy.

The violation for RHO036 remains in the Report. The policy file provided by the Company indicates on the screen labeled 'Prior Policies/Losses' that the October 23, 2011 loss was described as "AC unit was stolen—police report was filed." The screen print also stated that the "Information Source" was CLUE. The policy file did not indicate that the claim was classified as a vandalism and malicious mischief claim. This claim should have been classified as a theft claim. The Company's statement that the information above was entered by the insured is not supported in the policy file.

- (3c) Based upon the documentation provided in the Company's response the violations for RHO006, RHO008, RHO028, RHO033, RHO038, and RHO047 associated with the Company using the incorrect year built date have been withdrawn from the Report.

The violation for RHO030 remains in the Report. The CoreLogic report matches the same year built as the inspection report in the policy file. The information provided by the Company does not support how the Company arrived at a different year built than both the inspection and CoreLogic reports.

The violation for RHO050 remains in the Report. The CoreLogic provided by the Company states two different dates. One date matches the inspection report and one date matches the date stated in the Company's policy file. The date used by the examiner to rate this policy was 1994 since this was the information most advantageous to the insured.

The violations for RHO012, RHO028, RHO035, RHO041, RHO046, RHO047, RHO048, and RHO050 for failing to use the correct PPRC factors were withdrawn on October 28, 2016.

The violations for RHO015, RHO022, and RHO031 for failing to use the PPRC factors were withdrawn on June 03, 2016.

The violations for RHO012, RHO018, RHO030, RHO035, RHO041, RHO043, RHO046, RHO047, RHO048, and RHO050 for failing to use the correct Ordinance and Law factors were withdrawn on October 28, 2016.

The violations RHO025, RHO029, RHO031, RHO42, and RHO049 for failing to use the correct Ordinance and Law factors were withdrawn on June 3, 2016.

The violation for RHO044 for failing to use the correct Ordinance and Law factor was withdrawn on October 27, 2016.

The violations for RHO017 and RHO037 remain in the Report. For reconsideration, the Company should provide the declarations pages applicable to the primary residence for the policies that were rated as the secondary residences in the examination.

The Company has stated that 19 review sheets did not reference specific violations. Attached are copies of these review sheets. It is not clear to the Bureau what the confusion is on these 19 violations.

The Company incorrectly referenced the roof covering violation in RHO036 under (3c). This violation has been addressed under the correct section, (3d).

- (3d) The violation for RHO004 remains in the Report. The Company provided the CoreLogic Report. The Company has previously advised the Bureau that this report is reliable. According to this report, the roof covering was Asphalt Shingles and therefore the examiner rated the policy as such.

The violation for RHO005 remains in the Report. The Company's system states that the roof covering was wood shake. The CoreLogic report indicates that the roof covering was composite shingles. Because the Company has advised that the CoreLogic Report is reliable, the policy was rated based upon the CoreLogic information.

After further review, the violation for RHO010 has been withdrawn from the Report.

The violation for RHO016 remains in the Report. The Company's system states that the construction of the residence is >67% Brick Veneer. Based upon the rules on file with the Bureau, this is classified as Masonry. However,

the Company's CoreLogic report states that the construction is wood. Therefore, the policy should have been rated as frame construction.

The violation for RHO022 remains in the Report. The Company's system indicates that the construction of the residence is >67% Brick Veneer, one story with an asphalt or fiberglass composite roof covering. The Company's CoreLogic report states that the construction is wood, two stories and a composition shingle roof covering. Based upon the Company's previous statements that CoreLogic reports are reliable, the policy was rated using the CoreLogic information.

The violation for RHO036 remains in the Report. For reconsideration, the Company should provide the CoreLogic report confirming the roof covering.

The violation for RHO041 remains in the Report. For reconsideration, the Company should provide the CoreLogic report confirming the construction type of the insured premises.

Homeowners Renewal Business Rating

- (2) The violations in this section remain in the Report. The Company displayed a discount on the declarations page that was neither filed nor applicable to the policy.
- (3) The violations for RHO053, RHO060, RHO073, RHO079, RHO095, RHO099, RHO103, RHO105, RHO107, and RHO109 remain in the Report. The Company filed a \$30.00 Expense Constant and failed to apply the premium to the policies.

The violation for RHO093 remains in the Report. The violation relates to the \$30.00 expense constant as well as failing to apply the correct factor for the Age of Insured.

TERMINATIONS

Automobile Cancellation Notices Mailed Prior to the 60th Day

- (1) Review item TPA020 has been moved from the Over 60 Category to First 60 and a violation of § 38.2-228 of the Code of Virginia has been added to the Report. The Company has information in one of the screen shots from its system that shows an SR 22 filing was necessary. The Report has been renumbered to reflect this change.
- (2) The violation for TPA008 remains in the Report. The Company should not include the billing statement on the Notice of Cancellation where payment would not change the outcome. Including the premium payment information on the cancellation notice infers that payment of premium would continue coverage, which is misleading to the insured.

Based upon additional information provided by the Company, the violation for TPA012 has been withdrawn from the Report.

- (3) Based upon additional information provided by the Company, the violation for TPA025 has been withdrawn from the Report.
- (4) The violations for TPA008 and TPA014 remain in the Report. The Bureau advised the Company in the June 30, 2006 Market Conduct Examination to remove all references to excluded drivers on applications and declarations pages. The Company assured the Bureau that this change had been made. The Bureau discovered that this change had not been made when a second Market Conduct Examination was completed as of August 31, 2009. Again, the Company informed the Bureau that this change had been made.
- (5) Based upon additional information provided by the Company, the violations for TPA001 and TPA014 have been withdrawn from the Report.

Automobile Cancellation Notices Mailed After the 59th Day

- (1) The violation for TPA020 has been withdrawn and moved to Cancellations Prior to the 60th Day. The Company included this record in the incorrect category. The Report has been renumbered to reflect this change.
- (1) The violation for TPA019 remains in the Report. The proof of mailing did not include a legible USPS date stamp.
- (2) The violation of TPA020 has been moved to the First 60 category. The Company included this policy in its population files as a cancellation Over 60 days of coverage category.

Automobile Nonpayment of Premium Cancellations

- (1a) After further review, the violation for TPA028 has been withdrawn from the Report.

The violation for TPA039 remains in the Report. The Company failed to calculate the earned premium correctly resulting in an amount being reported to the collection agency that was greater than the amount the insured owed.

- (2a) Based upon additional information provided by the Company, the violations for TPA028, TPA046, and TPA049 for failing to retain proof of mailing have been withdrawn from the Report and replaced with violations for invalid proof of mailing, as shown in the paragraph below.

Three violations of § 38.2-2208 A have been added to the Report for TPA028, TPA046 and TPA049. The proof of mailings provided by the Company in response to the Report did not include legible USPS date stamps. The Report has been renumbered to reflect this change.

After further review, the violations for TPA039, TPA042, TPA043, TPA044 TPA048, and TPA050 have been withdrawn from the Report.

- (2b) After further review the violation for TPA031 has been withdrawn from the Report. The Company incorrectly referenced this termination as TPA028.

The violation for TPA049 remains in the Report and has been amended to show failure to send notice to the additional interest. The declarations page, printed January 16, 2015 shows Pinnacle Financial Group as an additional interest. The cancellation date under review is January 26, 2015. The documentation provided by the Company has a cancellation date of July 25, 2015.

- (2c) After further review, the violation for TPA027 has been withdrawn from the Report. The Company incorrectly referenced this termination as TPA028.

- (2d) After further review, the violation for TPA039 has been withdrawn from the Report. The Company incorrectly referenced this termination as TPA028.

- (3b) After further review, the violation for TPA054 has been withdrawn from the Report.

Other Law Violations

Based upon additional information provided by the Company, the violation for TPA050 has been withdrawn from the Report.

Automobile Insured Requested Cancellations

- (1) The violation for TPA065 remains in the Report. This policy was effective September 3, 2014 and cancelled June 30, 2015. The policy premium was \$6,395.00 with no endorsements. The Company's earned premium (pro-rata) was \$5,256.16. The Company's earned fees were \$30.00 (\$3 x 10 installments). The total premium due was \$5,286.16. The insured paid \$5,627.00. The refund due to the insured was \$340.84. The Company refunded \$559.00 which resulted in an undercharge of \$218.16.
- (2) The violation for TPA068 has been withdrawn from the Report. One violation has been added to the Report for failing to return the premium to the insured. Please see review sheet TermIRPPA-1454708449.
- (3) The violation for TPA063 remains in the Report. The Company backdated this cancellation without proof of duplicate coverage as required by the rule on file with the Bureau. If it is the Company's intention not to require proof of duplicate coverage, the Company must contact the Bureau and amend its rule.

After further review, the violation for TPA065 has been withdrawn the Report.

Automobile Non-Renewals

- (1) The violations for TPA073 and TPA075 remain in the Report. The Bureau advised the Company in the June 30, 2006 Market Conduct Examination to delete all references to excluded drivers on applications and declarations pages. The Company assured the Bureau that this change had been made. The Bureau discovered that this change had in fact not been made when a second Market Conduct Examination was completed as of August 31, 2009. Again, the Company informed the Bureau that this change had been made.
- (2) The violation for TPA075 remains in the Report. The Company utilized bulk mailing to deliver the cancellation notice to one of the lienholders shown on the declaration page. Bulk mailing was no longer a valid method of delivery in Virginia at the time the cancellation notice was sent to the lienholder.

Homeowner Cancellation Notices Mailed Prior to the 90th Day

- (1) After further review the violation for THO010 has been withdrawn from the Report. The Report has been renumbered to reflect this change.
- (2) The violation for THO022 remains in the Report. The examiners agree that the earned premium amount is \$435.00. The insured paid \$445.00 and the Company refunded the insured \$227.00. For reconsideration, the Company needs to explain the refund amount of \$227.00 when the insured should have only been sent \$10.00 (\$445.00 paid - \$435.00 earned). The termination portion of the examination was based upon the date of cancellation, not the date of notice. As such, the cancellation date of September 25, 2014 falls within the audit period of September 1, 2014 – August 31, 2015.
- (3) The violation for THO003 remains in the Report. The Company stated a copy of the proof of mailing was provided to the examiners. The USPS stamp on proof of mailing obtained during the examination was not legible. The Company has not provided valid proof of mailing.

Homeowner Cancellation Notices Mailed After the 89th Day

- (1) The violations for THO019 and THO056 remain in the Report. The USPS stamp is not legible. The examiners are unable to clearly see the date on the stamp to verify when the notice was mailed to the insured.
- (2a) After further review, the violation for THO002 has been withdrawn from the Report and moved to review sheet TermOvr90HO1495113284.

After further review, the violation for THO021 has been withdrawn from the Report and moved to review sheet TermOvr90HO492584466.

After further review, the violation for THO056 has been withdrawn from the Report and moved to review sheet TermOvr90HO-2090472971.

- (2b) After further review, the violations for THO055 and THO056 have been withdrawn from the Report.
- (2c) The violation for THO021 remains in the Report. The lienholder notice states the cancellation was sent by USPS. The Company has not provided valid proof of mailing from the USPS showing the lienholder name and address.

Homeowner Nonpayment of Premium Cancellations

- (1) The violation for THO030 remains in the Report. The Company stated a copy of the cancellation notice was provided to the examiners. The termination file information was not included with the exhibits provided by the Company. The information obtained while on-site included proof of mailing but did not include the notice sent to the insured. For reconsideration the Company should provide the cancellation notice applicable to the termination under review.

- (3a) After further review, the violation for THO025 has been withdrawn from the Report and moved to review sheet TermNPHO-1283779285.

After further review, the violation for THO029 has been withdrawn from the Report and moved to review sheet TermNPHO-714646896.

After further review, the violation for THO032 has been withdrawn from the Report and moved to review sheet TermNPHO847792977.

After further review, the violation for THO033 has been withdrawn from the Report and moved to review sheet TermNPHO1423967038.

After further review, the violation for THO035 has been withdrawn from the Report and moved to review sheet TermNPHO1204438503.

After further review, the violation for THO041 has been withdrawn from the Report and moved to review sheet TermNPHO-1877224548.

After further review, the violation for THO044 has been withdrawn from the Report and moved to review sheet TermNPHO805460589.

- (3b) After further review, the violations for THO025, THO035, THO041 and THO044 have been withdrawn from the Report.
- (3c) The violations for THO041 and THO044 remain in the Report. The Company has not provided the examiners with a valid proof of mailing.

Homeowner Non-Renewals

- (1) The violations for THO059, THO062, THO063, THO065, THO067, and THO068 remain in the Report. The Company has not provided any documentation showing that the lienholder was provided a non-renewal notice.

Private Passenger Automobile Claims

- (1) The violations for CPA002, CPA009, CPA011, CPA013, CPA016, CPA017, CPA020, CPA021, CPA023, CPA024, CPA026, CPA029, CPA031, CPA038, CPA040, CPA045, CPA053, CPA060, CPA065, CPA066, CPA078, CPA080, CPA090, CPA092, CPA094 and CPA099 have been withdrawn from the Report.

The violations for CPA005, CPA087 and CPA088 remain in the Report. The examiners reviewed the Company's Claims Guidelines and found no reference to a Company practice of not requiring signed releases on certain BI claims.

The violations for CPA010, CPA072, CPA095, and CPA096, remain in the Report. The Company indicated they provided a copy of the rental invoices. However, the Bureau has not received these documents.

The violation for CPA014 remains in the Report. The Company failed to provide the missing medical bills.

The violation for CPA028 remains in the Report. The Company included documentation that did not apply to this loss. The Company sent the insured a letter with content applicable to the state of New York. This was a Virginia policy.

The violation for CPA048 remains in the Report. The Company's April 21, 2016 response to the review sheet indicated that the vehicle was a 1997 Toyota Camry and that the vehicle did not have rental coverage. There is no Toyota vehicle involved in this claim. The correct claim was reviewed by the Bureau and it matches the documentation for a hail loss to a Volkswagen.

The violation for CPA087 remains in the Report. There is no corresponding supplement in the claim file or documentation provided by the Company totaling \$1,616.79. This payment amount remains unsubstantiated.

The violation for CPA097 remains in the Report. The Company's file did not document the reason for the split payments on the rental bills.

The Company has stated that there are no violations under 14 VAC 400-30 for the following claims; CPA018, CPA041, CPA057, CPA068, CPA070 and CPA

093. The Bureau has attached the review sheets for these violations previously sent to the Company.

- (2a) Based upon additional information provided by the Company, the violation for CPA060 has been withdrawn from the Report.
- (2b) The violation for CPA004 remains in the Report. The Company asserts that the note in the claim file stating "C-181" means that coverage was discussed with the insured. This is insufficient documentation to demonstrate that applicable coverage was reviewed with the insured. Further, the notes following C-181 do not advise the insured of the Medical Expense Limits applicable to the loss.

The violation for CPA070 under review sheet ClaimVehPPA-240970383 remains in the Report. The Company did not inform the insured of the available Medical Expense Benefits limits. The violation of § 38.2-510 A 10 under review sheet ClaimVehPPA297687034 was withdrawn May 24, 2016. The violation under review sheet ClaimVehPPA-1107291405 remains in the Report under 14 VAC 5- 400-30.

- (2c) Based upon additional information provided by the Company, the violations for CPA011, CP060, CPA062, and CPA075 have been withdrawn from the Report.

After further review the violation for CPA083 has been withdrawn from the Report.

- (3) Based upon additional information provided by the Company, the violation for CPA068 has been withdrawn from the Report.
- (4) The violation for CPA075 remains in the Report. The Company told the insured that she was 50% at fault for the accident and therefore not eligible for UMPD. This is a denial of coverage and requires a written denial outlining the policy provisions applicable to the denial.
- (5a) The violations for CPA078, CPA082, and CPA091 remain in the Report. The Company's position is in direct conflict with the Uninsured Motorist Coverage endorsement PP 14 03 01 05 and §38.2-2206 A of the Code of Virginia. The Uninsured Motorist Coverage endorsement defines an uninsured motor vehicle as a (2) "...vehicle whose operator is unknown..." Further, §38.2-2206 A of the Code of Virginia states that the \$200.00 deductible applies "...where the loss or damage is a result of any one accident involving an unidentified owner **or** operator of an uninsured motor vehicle." In all three violations cited above, the Company wrongfully applied a \$200.00 deductible when the at-fault uninsured motorist was clearly identified. The Company should immediately make restitution to the insureds.

Based upon the Company's response to these violations, this has been referred to the Market Analyst in the Bureau's Market Conduct Section. The

Company will receive correspondence requesting an internal audit of all UMPD claims with a date of loss between September 1, 2014 and the date of this letter. The Company must make restitution on any UMPD claims where the uninsured motorist was identified. Subrogation is not relevant when the uninsured motorist **and/or** the uninsured motor vehicle are identifiable.

- (5c) The violation for CPA016 remains in the Report. The Company's claim file does not include a total loss evaluation from the Company's vendor. The claim note in the Company's claim system is not documentation of the value and subsequent payment.

Based upon the additional information provided by the Company, the violation for CPA017 has been withdrawn from the Report.

The violation for CPA053 remains in the Report. The Company's claim file does not include a total loss evaluation from the Company's vendor. The claim note in the Company's claim system is not documentation of the value and subsequent payment.

The violation for CPA056 remains in the Report. The Company's claim file does not include a total loss evaluation from the Company's vendor. The claim note in the Company's claim system is not documentation of the value and subsequent payment.

- (5d) Based upon the additional information provided by the Company, the violations for CPA006 and CPA035 have been withdrawn from the Report.

The violation for CPA041 remains in the Report. The Company issued payments to the insured and the health care provider and then sent the checks to the provider, not the insured. The provider was not a party to the Medical Expense Benefits coverage and therefore had no right to receive benefits owed directly to the insured under that coverage. The lien from the provider failed to address the availability of health care coverage that was evident in the documents. Finally, §38.2-2201 of the Code of Virginia is clear regarding the Assignment of Benefits (AOB). There was no assignment of benefits executed by the insured which granted the Company permission to pay benefits to anyone other than the insured.

After further review, the violation for CPA083 has been withdrawn from the Report. This violation pertained to the medical expense payment.

The violation for CPA086 remains in the Report. The Company paid the medical provider direct in the amount of \$1000.00. There was no Assignment of Benefits executed by the insured which granted the Company permission to pay benefits to anyone other than the insured.

- (5e) Based upon additional information provided by the Company, the violations for CPA016, CPA053, CPA086 and CPA090 have been withdrawn from the Report.

The violation for CPA057 remains in the Report. The Company has not provided a copy of the rental invoice.

The violation for CPA066 remains in the Report. The Company has provided the rental invoice. However, the Company did not pay the CDW charges. The Company did not advise the insured that CDW was not necessary until after the insured rented the vehicle, as such, the Company should pay the CDW charges.

The violation for CPA072 remains in the Report. The Company has provided the rental invoice which shows that the Company did not pay the CDW charges to the insured. The Company did not advise the insured that CDW would not be covered and therefore should reimburse the insured for this expense.

The violation for CPA080 remains in the Report. The Company provided the rental invoice which shows that the Company owes the insured the remaining rental expense of \$49.99.

The violation for CPA095 remains in the Report. The Company provided the rental invoice which shows that the Company owes the insured one day CDW. The insured was not advised that CDW was not covered; therefore, the Company owes this expense.

The violation for CPA097 remains in the Report. The Company provided the invoices. Between the two claims, the Company paid \$906.00. The Transportation Expense endorsement applies per occurrence. These were two different occurrences and the limit would be \$600.00 per loss. The total of both bills was \$983.25. The Company authorized the rental period that was billed; therefore, the Company owes the remaining \$77.25 in charges.

- (5f) After further review, the violation for CPA003 has been withdrawn from the Report.

After further review, the violation for CPA045 has been withdrawn from the Report.
- (6a) After further review, the violations for CPA001, CPA002, CPA009, CPA010, CPA024, CPA049, CPA060, and CPA093 have been withdrawn from the Report.
- (6b) After further review, the violations for CPA024, CPA040, and CPA088 have been withdrawn from the Report.
- (7) After further review, the violation for CPA060 has been withdrawn from the Report. The Report has been renumbered to reflect this change.

- (9) After further review, the violations for CPA001 and CPA011 have been withdrawn from the Report.

After further review the violation for CPA024 has been withdrawn from the Report. This violation should have been cited in the section below pertaining to violations of § 38.2-2204 of the Code of Virginia.

The violation for CPA077 remains in the Report. The policy contract provides sufficient direction to an insured regarding his "Duties After an Accident or Loss". The Company is not permitted to add coverage conditions that the Company may feel are expedient but are not part of the policy contract.

- (10) After further review, the violation for CPA006 has been withdrawn from the Report.

The violation for CPA033 remains in the Report. The insured clearly stated that some of the medical treatment was not related to the accident. The Company paid the entire bill without further investigation. The portion of the violation relating to the total loss was removed on June 29, 2016.

- (11) Based upon additional information provided by the insured the violation for CPA060 has been withdrawn from the Report.

- (12) After further review, the violations for CPA017, CPA026, and CPA083 have been withdrawn from the Report. The Bureau recommends that the Company revise its coverage references to reflect the coverages noted in the policy forms.

After further review, the violation for CPA024 has been withdrawn from the Report.

CPA057 does not have a violation under §38.2-510 A1. The Bureau has attached a copy of review sheet ClaimVehPPA-1227255172 which is a violation under §38.2-510 A10.

- (13b) The violation for CPA034 remains in the Report. The information the Company has referred to in the estimate is not the language required by the statute. The Code of Virginia has specific aftermarket parts language.

The violation for CPA068 remains in the Report. The estimates written by American Mercury Insurance Company do not include the after-market parts notice. The information the Company has referred to in the estimate is not the language required by the statute. The Code of Virginia has specific aftermarket parts language.

- (14) The violation for CPA041 remains in the Report. The Company issued payments to the insured and the health care provider and then sent the checks to the provider, not the insured. The provider was not a party to the

Medical Expense Benefits coverage and therefore had no right to receive benefits owed directly to the insured under that coverage. The lien from the provider failed to address the availability of health care coverage that was evident in the documents. Finally, § 38.2-2201 of the Code of Virginia is clear regarding the AOB. There was no AOB executed by the insured which granted the company permission to pay the insured's benefits to anyone other than the insured.

After further review, the violation for CPA083 has been withdrawn from the Report.

(15) The violations for CPA005, CPA006, and CPA008 remain in the Report. The Bureau advised the Company in the June 30, 2006 Market Conduct Examination to remove all references to excluded drivers on applications and declaration pages. The company assured the Bureau that this change had been made. The Bureau discovered that this change had in fact not been made when a second Market Conduct Examination was completed as of August 31, 2009. Again, the Company informed the Bureau that this change had been made. The Company should Cease and Desist from indicating named drivers do not have permission to operate the vehicle.

(16a) The violation for CPA016 remains in the Report. On January 6, 2015, the Company sent the insured a letter that stated "We would like to resolve this claim. To help us do so, we request the following: 1. The police report."

(16b) Based on additional information provided by the Company, the violation for CPA017 has been withdrawn from the Report.

The violations for CPA044 and CPA078 remain in the Report. The correct review sheet number for CPA044 is ClaimVehPPA1605383604. The payments on both of these claims were made prior to the procedural change in the Company's manual.

(16c) After further review, the violation for CPA061 has been withdrawn from the Report.

The violation for CPA083 remains in the Report. According to the Company's April 13, 2015 file notes, the settlement included "\$13.00 Tag/Title".

(16d) Based upon additional information provided by the Company, the violation for CPA041 has been withdrawn from the Report. The procedural changes in the Company's manual preceded the payment.

Other Law Violations

After further review, the violation for CPA005 has been withdrawn from the Report.

Homeowner Claims

- (1) After further review, the violations for CHO004, CHO007, CHO015, CHO020, CHO031, CHO035, CHO040, CHO042, CHO076, and CHO084 have been withdrawn from the Report

The violation for CHO025 remains in the Report. The violations for items one and two are withdrawn. The third violation has been revised to read "The claim file does not include documentation to support the payment of \$150.00 to the insured for a food loss." The claim file did not include a copy of insured's food estimate.

The violation for CHO037 remains in the Report. A copy of the review sheet is attached.

The violation for CHO068 has been withdrawn from the Report. One violation has been added to the Report for the Company misrepresenting its obligation to the insured under the replacement cost provision(s) of the policy. Please see review sheet ClaimVehHO679933861.

A violation has been added to the Report for CHO073. Please see the enclosed review sheet ClaimPropHO1310083099.

- (2) Review sheet ClaimPropHO471188777 is not a duplicate of review sheet ClaimPropHO1137279434. One violation applied to the building and the other to personal property.

- (2a) Two review sheets have been added for items CHO074 and CHO083; ClaimPropHO1495814160 and ClaimPropHO909278217 respectively.

- (3) After further review, the violation for CHO020 has been withdrawn from the Report. The Report has been renumbered to reflect this change.

- (4) The violation for CHO051 remains in the Report. The claim file notes of June 2, 2015, identify the Home Care Agreement in the amount of \$389.00. This can be found on the itemized billing from Michael and Sons. The adjuster stated that this would not be part of the settlement. The Company discussed the denial of the Home Care Agreement with the insured but failed to send the insured a written denial. The Company should review 14 VAC 5-400-70 A of the Virginia Administrative Code which requires that a denial must be given in writing.

The violation for CHO074 remains in the Report. An invoice from the painting contractor was submitted to the Company for payment in the amount of \$5,125.00. The claim notes dated March 18, 2015 state "we do not owe for drywall repair, peeling of paint of door jambs and wallpaper repair." The Company did not pay for these repairs and failed to send the insured a denial

letter. The Company should review 14 VAC 5-400-70 A of the Virginia Administrative Code which requires that a denial must be given in writing.

The violation for CHO084 remains in the Report. The Company has not provided any documentation to support their position. The only document dated September 17, 2015 is an email from the Claims Service Company to the insurance company closing the file.

- (5a) Please provide a check number and the date the check was issued for CHO012.

After further review, the violation for CHO035 has been withdrawn from the Report.

Please provide a copy of the check for CHO074. The Company has referenced two different dates that the payment was made

The violation for CHO081 remains in the Report. The claim file does not support the Company's conclusion that there was no coverage for this claim. The Company did not inspect the damage but instead based a coverage decision upon the insured's statement that she thought a downspout was clogged. The insured was not an expert. The Company had an obligation to investigate damage and the cause of loss but failed to do so.

The violation for CHO049 remains in the Report. The insured withdrew this claim after the Company advised him that the loss would be less than his \$1000.00 deductible. The loss may be a mold claim and therefore would be covered under the Limited Fungi, Other Microbes or Rot endorsement. This endorsement is not subject to a deductible.

The violation for CHO078 remains in the Report. The insured withdrew this claim after the Company advised him that the loss would be less than his \$500.00 deductible. The loss may be a mold claim and therefore would be covered under the Limited Fungi, Other Microbes or Rot endorsement. This endorsement is not subject to a deductible.

- (5b) The violation for CHO004 remains in the Report. The loss was due to Other Microbes. The declaration page shows coverage for Limited Fungi and Other Microbes or Rot. The limit was \$5,000 per policy period with the terms undefined. The Company should cover this loss without a deductible. By definition, feces have trillions of microbes. The Company received an evaluation from Enservio for contents totaling \$1,392.02. The Company paid \$339.02 under the insured's personal property; however, payment should have been made under the Limited Fungi and Other Microbes coverage. The underpayment is changed to \$1,053.00.

- (5c) The violations for CHO002, CHO020, CHO056 and CHO077 have been withdrawn and moved to ClaimPropHO77051591, ClaimPropHO284844753, ClaimPropHO20141971201, and ClaimPropHO170320483, respectively. The

Company has supported its position that the additional cost of electricity as a result of remediation and/or reconstruction is related to the dwelling coverage. These violations have been moved from the ALE coverage to violations under the dwelling coverage. Concerning the reimbursement of these expenses, the Company does not have supporting research or subsequent documentation to support its conclusion that "...many insureds would rather forego the claim than document their loss by finding electric bills and submitting them." In the above claims, the insureds were not made aware of the potential reimbursement for the increase in the cost of electricity that resulted from a covered loss. It is the responsibility of the Company to inform insureds that an increase in the cost of the electricity (and subsequent electric bill), due to electric equipment used to mitigate a covered loss, can be reimbursed under the policy. The Bureau appreciates the letters sent to insureds during the course of the Market Conduct Examination advising them of the available coverage for increased electric usage.

The violation for CHO012 remains in the Report. The claim notes indicate that the insured stayed in a hotel for one or two nights and the Company failed to offer the insured ALE for this expense.

- (5d) The violation for CHO056 remains in the Report. The insured's policy reads "We will pay your reasonable expense for the removal of debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss. We will also pay your reasonable expense for removal of fallen trees which cause damage to covered property." The policy defines an "Insured location" as: "a. the residence premises and b. The part of other premises, other structures and grounds used by you as a residence..." The tree fell as a result of wind which is a covered peril. The tree fell on the residence premises (the house). The grounds are defined as part of the "residence premises". The Debris Removal coverage includes the expense for the "...removal of debris of covered property...". The "grounds" include the tree. The Company removed only part of the tree from the property but not a significant root ball which is part of the tree, part of the residence premises and fully covered under the Debris Removal portion of the policy.

Based upon additional information provided by the Company, the violation for CHO049 has been withdrawn from the Report. One violation has been added to the Report for failing to offer the insured an amount that was fair and reasonable for damages. See review sheet ClaimVehHO599844781.

- (5e) After further review, the violation for CHO009, CHO013, CHO051, and CHO077 have been withdrawn from the Report.
- (6a) After further review, the violation for CHO002 has been withdrawn from the Report.
- (6c) The Report has been amended to show 21 violations. Review sheets with multiple violations that remain in the Report have been revised to a single violation. Copies of these revisions are attached.

The violation for CHO003 remains in the Report. The letter of September 15, 2014 did not properly represent the replacement cost provisions of the policy. The letter advised the insured that they had 180 days after the date of loss to file a claim for replacement cost.

The violation for CHO005 remains in the Report. The letter of October 1, 2014 did not provide the additional policy provision that states, "or the date of entry of any court order declaring your right to full replacement cost".

After further review, the violations for CHO006 and CHO031 have been withdrawn from the Report.

The violation for CHO037 remains in the Report. The letter of May 20, 2015 did not properly represent the replacement cost provisions of the policy. None of the policy provisions were provided to the insured.

The violations for CHO041, CHO042, CHO043, CHO046, CHO047, CHO056, CHO060, CHO062, CHO063, CHO066, CHO073, CHO077, and CHO082 have been withdrawn from the Report. Although these claims contain letters with incorrect language, the correct language was eventually sent to the insureds.

The violation for CHO058 remains in the Report. The letter of August 10, 2015 did not properly represent the replacement cost provisions of the policy.

The violation for CHO065 remains in the Report. The letter of September 21, 2015 did not properly represent the replacement cost provisions of the policy.

The violations for CHO074 and CHO083 have been withdrawn and moved to violations under 14 VAC 5-400-40 A. Please see review sheets ClaimPropHO1495814160 and ClaimPropHO909278217, respectively. The Company did not advise the insured regarding recoverable depreciation

Based upon additional information provided by the Company the violation for CHO083 has been withdrawn and moved to review sheet ClaimPropHO909278217.

The violation for CHO004 remains in the Report. The Company did not properly represent the replacement cost provisions. The Company's letter advised the insured that he had 180 days after the ACV payment to present a claim.

After further review, the violation for CHO009 has been withdrawn from the Report.

After further review, the violation for CHO022 has been withdrawn from the Report.

- (7) The violation for CHO022 remains in the Report. According to the file notes, the insured was not present when the estimate was completed. The Company made no attempt to contact the insured via email or letter when it became apparent that phone contact was ineffective. The Company cannot rely on a vendor to manage the insured's claim and determine additional damages.

After further review, the violation for CHO068 has been withdrawn from the Report.

- (8) After further review, the violation for CHO037 has been withdrawn from the Report.

After further review, the violation for CHO073 has been withdrawn from the Report. An additional violation has been added under review sheet ClaimPropHO1310083099.

- (9) There are four violations in this section of the Report. Three claim review sheets have one violation each. Review sheet ClaimPropHO316295576 for CHO079, includes two violations, as there were two checks issued that did not indicate under which coverage the payment was made.

- (10a) After further review, the violation for CHO041 has been withdrawn from the Report.

- (10b) There are eight violations in this section of the Report. Three claim review sheets have one violation each. The claim under CHO047, review sheet ClaimPropHO-1664697732, has five violations.

The violations for CHO015, CHO026 and CHO074 remain in the Report. These violations were all estimated for more than \$5,000.00. The initial payments were less than the \$5,000.00 due to the hold back for depreciation. The Company should have proceeded based on the anticipated payments.

- (10c) After further review, the violations for CHO052, CHO077 and CHO079 have been withdrawn for the Report.

The violation for CHO062 remains in the Report. The Company has not provided any documentation to support its position.

Forms

- (1) The violation for FPA022 remains in the Report. The Company has responded that no new business was written in Mercury Casualty during the examination period and therefore the Rate Classification Statement was not necessary. What form was used for the renewal business?

The violation for FPA023 remains in the Report. The Rate Classification Statement provided by the Company had a 12/2015 edition date which was after of the examination period.

- (3a) Based upon information provided by the Company the violation for FPA025 has been withdrawn from the Report. The Company has declared that this form was submitted in error and the examiners did not see the form used during the audit period.

The violation for FPA031 remains in the Report. The Company renewed policies during the examination period. What form was used for the renewal business?

General Statutory Notices

After further review, the violations for NGS001 and NGS014 have been withdrawn and moved to a recommendation.

Statutory Vehicle Notices

- (1) The violations for NSV006 and NSV021 remain in the Report. The Company provided a customer service number with their response. However, when the insured calls this number, he is not advised prior to being transferred that the third party vendor is not the insurer but is in fact acting on behalf of the insurer.
- (2) After further review, the violation for NSV020 has been withdrawn from the Report. The Report has been renumbered to reflect this change.

PART TWO – CORRECTIVE ACTION PLAN

Rating Review

The Company should provide the Corrective Actions the Company will take to prevent the identified violations from occurring in the future.

- (1) The Company was provided a restitution spreadsheet and instructed to complete and submit the spreadsheet with specific information such as the check amount, date of the check, amount of the check, etc. The Company has not provided this information. The Company should complete the

restitution spreadsheet as instructed and return it the Bureau. Additionally, the Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.

Termination Review

The Company should provide the Corrective Actions the Company will take to prevent the identified violations from occurring in the future.

- (1) The Company was provided a restitution spreadsheet and instructed to complete and submit the spreadsheet with specific information such as the check amount, date of the check, amount of the check, etc. The Company has not provided this information. The Company should complete the revised Restitution Spreadsheet as instructed and return it the Bureau.

Claims Review

The Company should provide the Corrective Actions the Company will take to prevent the identified violations from occurring in the future.

- (1) The Company was provided a restitution spreadsheet and instructed to complete and submit the spreadsheet with specific information such as the check amount, date of the check, amount of the check, etc. The Company has not provided this information. The Company should complete the restitution spread sheet as instructed and return it the Bureau. Additionally, the Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.
- (11) An additional Corrective Action has been added to the Report. Based on the upon the Company's response to the Uninsured Motorists claims in the Preliminary Report, the Company should conduct an internal audit of its Uninsured Motorist claims. A referral has been sent to the Market Analyst and a letter will be sent to the Company outlining the process for completing and reporting the results of the internal audit.

Statutory Notices Review

- (1) Please provide the estimated completion date for revising the notice to compliance with § 38.2-517 of the Code of Virginia.
- (2) Please provide the estimated completion date for revising the notice to comply with § 38.2-1905 of the Code of Virginia.

PART THREE – RECOMMENDATIONS

Rating

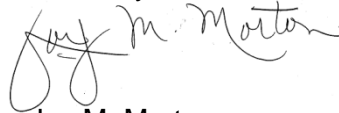
- Two recommendations have been added to the Report to address rules that should be revised in the American Mercury Insurance Company private passenger automobile manual.

Terminations

- The Company should provide the lienholder with adequate days' notice when cancelling or non-renewing a homeowner's policy.

We have made the changes noted above to the Market Conduct Examination Report. Enclosed with this letter is a revised version of the Report, technical reports and the Restitution spreadsheet. The Company's response to this letter is due in the Bureau's office by July 25, 2017.

Sincerely,



Joy M. Morton
Supervisor
Market Conduct Section
Property and Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov

Enclosures

COMPANY'S WRITTEN RESPONSE
TO
MARKET CONDUCT EXAMINATION REPORT
AS OF
August 31, 2015

American Mercury Insurance Company
and
Mercury Casualty Company

Date: August 23, 2017

685 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807
(908) 243-1800

The following are the Company's responses to the Market Conduct Examination Report as of August 31, 2015, and to the accompanying letter from the Bureau of Insurance dated June 22, 2017. Throughout these responses the "Company" or "Mercury" means Mercury Casualty Company or American Mercury Insurance Company, as applicable. The "Bureau" or the "Department" refers to the Bureau of Insurance for the Commonwealth of Virginia.

For the most part the Company responds below only to those findings and observations that it disputes, however in some cases the Company has included comments while not disputing the examiners' findings.

PART ONE – EXAMINERS' OBSERVATIONS

Rating And Underwriting Review

Automobile New Business Policies

- (3a) RPA008: The Company agrees with the Bureau's assessment that the Company did not remove the Mature Driver Discount after the policy had been set to cancel. Because the Company received notification that the insured did not qualify for the discount after the cancellation notice had been issued and mailed to the insured the policy was not retroactively altered to remove the discount.
- (3b) RPA045: The Company respectfully disagrees with the examiners' observations. Violations obtained from an MVR and those disclosed by the applicant appear on the application under the MVR Activity Section. In this case, the violation on 1/10/2013 was disclosed by the Insured and manually entered by the agent at the time of the quote. This is evidenced by the appearance of the violation in the MVR Activity Section on the new business application. The violation was not manually entered by the Company. The Bureau indicates that since there was no conviction date shown the Company cannot surcharge. The Company maintains that it is entitled to rely on information expressly provided by the insured and that it is reasonable for the Company to believe that the insured did not disclose a violation they were not convicted for. Please reference the attached copy of the application labeled "(3b) RPA045" which clearly shows that the 1/10/2013 violation was shown.
- (3d) Regarding RPA009, RPA010, RPA021, RPA023, RPA024, RPA038 and RPA057 the Company agrees with the Bureau's assessment that the application for insurance did not clearly record the limits or length of time with the current/previous insurance carrier, however, the Company maintains that the above-referenced files were rated correctly based on information provided by the agent, and no violations occurred. Regarding the difference from Current Carrier report, please note that reporting is commonly delayed as carriers have up to 30 days to report a policy termination or change. The fact that the

insured provided information different from what is on the Current Carrier report does not mean that the Current Carrier report is correct and that the insured was not.

In addition, prior to this examination the Company updated the application for insurance and it now reflects the limits of coverage and length of time with the prior insurance carrier. Please see the application copy included with this response and labeled "(3d) RPA009, RPA010, RPA021, RPA023, RPA024, RPA038, and RPA057."

- (3e) Regarding RPA006, RPA008, RPA023, RPA034 and RPA044 the Company respectfully disagrees with the examiners' observations. The Company received conflicting information from the insured. The information indicated that the vehicle was purchased new and that the purchase date was substantially later than the vehicle model year. The Company interpreted this ambiguous information in favor of the insured and allowed the discount to remain. Prior to this examination and during the examination period the Company deployed a new policy writing system which will prevent this from occurring in the future.

RPA050: The Company respectfully disagrees with the examiner's newly added observation detailed on review sheet R&UNBPPA-413789808. The attached application and print of the Company's policy system show that the 1986 Toyota was purchased used on 4/24/2013 and that it was not given a discount for the vehicle being purchased new. The attached rating breakdown shows that the new/used factor for this vehicle was 1.0. These exhibits are labeled "(3e) RPA050."

RPA065 & RPA069: The Company acknowledges that these policies were submitted prior to the filed rate change but effective after the effective date of the rate change and that the rates in effect at the time of submission were used to rate the policy.

- (4) RPA006 RPA013 RPA024 RPA026 RPA029 RPA032 RPA036 RPA037 RPA039 RPA040 RPA041 RPA050 RPA057 RPA059 RPA060 RPA068

For the files referenced above, the Company respectfully disagrees with the examiners' findings that drivers have been excluded from coverage. Nonetheless, during the review period and prior to this review, the Company revised the language on the application and declarations page with respect to Additional Household Members. The language in question is no longer in use. Please see the revised application and declarations page for American Mercury Insurance. This exhibit is labeled "(4) RPA006... ..RPA068." Mercury Casualty Company no longer writes or renews policies, consequently an updated version of this application is not available.

Automobile Renewal Business Policies

(1) The Company maintains that the presence of the PP 05 96 01/2005 on a policy that did not include coverage for Medical Expense and Income Loss Benefits in no way altered the coverage provided to the insured or the reasonable interpretation thereof. Nonetheless, prior to this examination and during the examination period the Company deployed a new policy writing system which corrected this issue. Included in this response is a copy of a current declarations page for a policy in which the Insured did not elect to purchase Medical Expense and Income Loss Benefits. This exhibit is labeled "Auto Renewal Business Rating (1)."

(3a) RPA096: This has already been acknowledged. On 8/22/16, the Bureau acknowledged that the Company acknowledged the violation for applying the Multi-Policy Discount based on a Condo policy when the Homeowner policy was actually an HO-3 form.

RPA151: Regarding the finding in R&URBPPA86019859 concerning the application of the three year Accident and Violation free discount, the Company has already acknowledged and the Department confirmed this in its response to the Company on 8/23/2016.

Regarding the newly added finding regarding the application of the Multi-Policy Discount, the Company respectfully disagrees. The Insured had a Mercury Casualty Company Homeowners policy and qualified for the Multi-policy discount. A redacted copy of the Homeowners policy Declarations has been included. This exhibit is labeled "(3a) RPA151."

(3b) RPA140: With respect to this policy, the Company respectfully disagrees. The Bureau indicated that the policy file did not indicate that driver 2, assigned to vehicle 2, had any surchargeable convictions or at-fault accidents. The policy file in fact contains information showing the driver 2 was convicted of Speeding 15-19 MPH on 9-26-2012 and Speeding 15-19 MPH on 4-25-2012. Included is a legible copy of the Company's record of the MVR report received on 2/4/2014. This exhibit is labeled "Auto Renewal Business (3b) RPA 140."

The Company respectfully declines the Bureau's recommendation for an internal audit to determine the number of policies affected by this violation. The MVR documentation noted above supports the surcharge points applied by the Company.

(4) RPA136 RPA141

For the files referenced above, the Company respectfully disagrees with the examiners' findings that drivers have been excluded from coverage. Nonetheless, during the review period and prior to this review, the Company revised the language on the application and declarations page with respect to Additional Household Members. The language in question is no longer in use. Please see the revised application and declarations page for American Mercury Insurance. This exhibit is labeled "Auto Renewal Business (4) RPA

136 RPA 141.” Mercury Casualty Company no longer writes or renews policies, consequently an updated version of this application is not available.

Homeowners New Business Policies

(3b) Tier eligibility criteria.

The Company disagrees. The examiners did not calculate the tier correctly. The examiners are using false representations made by an Insured to inaccurately rate the policies. The Department is suggesting that the Company use false information to rate policies when there is clear evidence contained within each policy file that directly contradicts the examiners’ assertions. The data used by the examiners are entered by the Insured as an attempt to avoid rate. Section 38.2-1906 D does not require the Company to rate policies using clearly fraudulent misrepresentations made by the Insured and the Company argues that the law requires the opposite. For example, Section 38.2-1906.1 clearly contemplates insurers conducting underwriting investigations and rating the policy correctly, rather than based on incorrect information furnished by the applicant, and insurers are estopped from charging insureds with misrepresentations when the insurer had the opportunity to correct the error but failed to do so. *Standard Life & Acc. Ins. Co. v. Dewberry & Davis, LLC, et al.*, 210 Fed.Appx. 330, 335 (4th Cir. 2006).

Specifically, for RHO008 the examiners claim the loss occurred under a BOP. There is no indication anywhere in the provided proof, which we have attached again for re-consideration. The loss occurred at the policy address, which is a residential location.

Additionally, for RHO036 we provided proof once again and the examiners are applying their own rules instead of our filed rates and guidelines. The A/C unit was partially stolen as in copper removed for re-sale. This is categorized as a malicious mischief claim instead of an entire theft claim. Please reconsider.

(3c) Correct base and/or final rates.

The Company disagrees with the Bureau’s findings on the following files, as discussed below:

RHO017 and RHO037: The examiners stated we should provide the primary policy declarations for these two policies to have the violations removed. We have attached them as requested. The violations should be removed.

For RHO050 – The examiners stated, “The CoreLogic report provided by the Company states two different dates. One date matches the inspection report and one date matches the date stated in the Company’s policy file. The date used by the examiner to rate this policy was 1994 since it was the information most advantageous to the insured.” Insurers are not required to use a date most advantageous to the insured instead of using the accurate information to rate the policy. Section 38.2-1906.1 clearly contemplates insurers conducting underwriting investigations and rating policy correctly. As such we look at the source of the information from the CoreLogic report. The tax records indicate

that the home is built in 1990. That is significantly more reliable than the inspector's visual estimate. As such, the home was rated as 1990 accurately and not by determining which is most in favor of the insured, as the department alleges we must. This is clearly inaccurate and we ask that this violation be removed.

(3d) Construction type.

For RHO004, RHO022, RHO041, the Company disagrees. The department is asking the Company to use factually inaccurate information to rate these policies. The inspection reports provided to the examiners directly contradict the assertions made here. The inspection reports contain photos and visual indications from the inspector as to the condition of the home and have been attached again for your reference. Insurers have the right and the duty to investigate facts when underwriting risks; Section 38.2-1906 D does not require the company to use factually inaccurate information provided by a third-party vendor to rate policies. Examiners were provided with this documentation at that time of the examination. The violations on these files should be removed.

For RHO004- the examiner indicated that the policy should be asphalt shingle. We too also note that the policy was rated with asphalt shingle. This violation should be removed. Documentation is provided again for reference.

For RHO022- the attached photos from the inspection confirm that the policy was correctly rated with most of the exterior being brick veneer. The Company does not contend that CoreLogic reports can be relied upon in all cases. But when the CoreLogic report is not consistent with the inspection report, or the insured's representations, the Company must make a reasoned judgment in order to accurately underwrite the risk. In this case the visual inspection was more reliable than the CoreLogic report.

For RHO041- the attached report confirms the construction type of the insured premises.

(3e) Protection class. [Paragraph numbered "d." in report]

The Company has provided authorization for our vendor to file PPC codes on our behalf, but the Bureau deemed each filing made by the vendor unacceptable. The company disagrees, and the Bureau has not cited a rule of law establishing that a "violation" resulted, but the Company will address the Bureau's concerns.

Homeowners Renewal Business Policies

(2) Section 38.2-502

The Company disagrees. The Bureau has acknowledged in their responses that there has been no misrepresentation. Furthermore, Section 38.2-502(1) requires the alleged misrepresentation to occur in any "estimate, illustration, circular, statement, sales presentation, omission, or comparison." Here the alleged misrepresentation is in the Insured's declarations page, which does not meet the standard as "advertising" indicated by the statute. No violations occurred here. The following violations should be removed:

RHO005, RHO006, RHO009, RHO011, RHO012, RHO014, RHO015, RHO018, RHO019, RHO022, RHO025, RHO026, RHO027, RHO031, RHO033, RHO040, RHO041, RHO043, RHO044, RHO046, RHO050.

(3) Section 38.2-1906(D)

There is a variety of allegations made under this heading. The Company agrees in part and disagrees in part. We ask that the violations be removed on the following 17 files:

RHO053, RHO054 – The examiner was using an incorrect policy fee to determine the calculations. The examiner should use the accurate filed policy fee to determine that we properly rated this policy.

RHO083 – The examiner incorrectly asserted that the 1.018 loss free factor was not applied appropriately. The policy was rated correctly and rating sheets were attached to affirmatively prove this fact, however the examiners failed to take any action or review this documentary proof. Thus we disagree.

RHO052, RHO054, RHO060, RHO061, RHO063, RHO080, RHO081, RHO097, RHO098, RHO104, RHO114, RHO124 - The Company has provided authorization for our vendor to file PPC codes on our behalf, but the Bureau deemed each filing made by the vendor unacceptable. The company disagrees, and the Bureau has not cited a rule of law establishing that a “violation” resulted, but the Company will address the Bureau’s concerns.

RHO068 - The Company rated this file accurately according to our filed rates. The examiner appears to have made a mistake in their calculations. The policy was rated correctly and rating sheets were attached to affirmatively prove this fact, however the examiners failed to take any action or review this documentary proof. Thus we disagree.

RHO093 - The examiner indicates that we are not applying the age of 37 to the Insured but we are. We have attached documentation in the past and currently again are attaching documentation to show we are rating the Insured’s age properly.

TERMINATION REVIEW

Company-Initiated Cancellations – Automobile Policies

NOTICED MAILED PRIOR TO THE 60TH DAY OF COVERAGE

- (1)** TPA020: The Company respectfully disagrees. Even in the presence of the information included in the screenshots the Bureau referenced, the insured still never requested that the Company file proof of financial responsibility. Section 38.2-228 requires that insurers provide proof of financial responsibility “at the request of a named insured.” Since the insured did not request that the Company file proof of financial responsibility, the Company had no obligations under § 38.2-228, and no violation occurred.

- (2) TPA008: The Bureau's response appears inconsistent with its original document. Previously the Bureau's finding in this area related to the AUD notice.

Regarding the AUD notice, the written AUD notice was printed on the back side of the Notice of Cancellation, which was included in the Company's response.

Regarding the billing statement printed on the cancellation notice, the Company respectfully disagrees. The Notice of Cancellation states "To reinstate your policy the information or document required and any payment amount due on or prior to the termination date indicated above must be received by the Company." Given that the Notice indicates that the policy will not be reinstated unless both the required information or document and the amount due is received, the notice is clear and unambiguous. Further, the Company is unable to locate any provision of Virginia law that indicates that a request for payment of premium due cannot be included on a Notice of Cancellation. Please see the cancellation notice attached. This exhibit is labeled "TPA008."

- (4) The Company respectfully reasserts its objection that this finding is unrelated to a Company initiated cancellation in the first 60 days. The Notice of Cancellation in no way references anything regarding exclusion of any driver, or even coverage provided to drivers generally. The Company respectfully requests that this violation be removed.

Notwithstanding the above objection, the Company responds as follows:

TPA008 TPA014

For the files referenced above, the Company respectfully disagrees with the examiners' findings that drivers have been excluded from coverage. Nonetheless, during the review period and prior to this review, the Company revised the language on the application and declarations page with respect to Additional Household Members. The language in question is no longer in use.

NOTICE MAILED AFTER THE 59TH DAY OF COVERAGE

The Bureau's response include two items marked (1) under this heading. The first (1) referred to a violation that was moved to another section. This response addresses the second (1).

- (1) TPA019: The Company respectfully disagrees. The Company obtained proof of mailing from the United States Postal Service. The Bureau asserts that the proof of mailing from the United States Postal Service is not sufficiently legible rendering it invalid. The Company has in its file a digital copy of proof of mailing stamped by the United States Postal Service. The stamp is sufficiently legible and constitutes valid proof of mailing. This document was contained in the file reviewed by examiners, and was provided again in the course of the examination in response to the preliminary observation. Included with this response is another copy of the proof of mailing, along with an expanded view of the stamp by the United States Postal Service. This exhibit is labeled "(1) TPA019."

We are also providing a digital copy via e-mail in the document entitled “USPS Stamps for PPA Response.docx.”

All Other Cancellations – Automobile Policies

NONPAYMENT OF THE PREMIUM

(1a) TPA039: The Company acknowledges this finding. Prior to this examination and during the examination period the Company deployed a new policy writing system which will prevent this issue from occurring.

(2a) TPA028 TPA046

For the above-referenced files, the Company respectfully disagrees. The Company has provided the Bureau with copies of the proof of mailing. Again, the Company has in its files a digital copy of the documents in question which contain legible stamps from the United States Postal Service. These exhibits are labeled “(2a) TPA 028”, “(2a) TPA 046” and “(2a) TPA 028 TPA 046.” We are also providing a digital copy via e-mail in the document entitled “USPS Stamps for PPA Response.docx.”

TPA049: The Certificate of mailing for this Notice of Cancellation was part of a packet where the top page was stamped by the United States Postal Service however the individual page referencing this notice of cancellation was not stamped. We do not believe this renders the certificate invalid, and the Company maintains that this notice would be upheld as valid in the event of a disputed claim.

(2b) TPA049: Regarding the cancellation with a system transaction date of January 26, 2015, mailed January 27, 2015, and effective February 12, 2015, the cancellation was reinstated on February 12, 2015, without lapse in coverage. No notice was sent to the Additional Interest as the policy did not actually terminate. Had the policy not been reinstated without lapse, the Company would have sent notice to the Additional Interest on or about February 22nd and effective on or about March 3rd. This provides coverage to the Additional Interest in compliance with VA statutes while minimizing the number of times a notice of cancellation and notice of reinstatement need to be sent in cases where the a non-payment cancellation is subsequently reinstated without lapse.

REQUESTED BY THE INSURED

(1) TPA065: The Company respectfully disagrees. The Bureau indicates that there were no endorsements to this policy, however this is not correct. The Bureau’s calculations appear to be based upon the initial policy written premium without taking into account the premium changes resulting from endorsements. The initial policy written premium effective September 3rd, 2014 was \$6370 plus a \$25 filing fee. The policy was endorsed effective March 3rd, 2015 to a written premium of \$5709 and again on June 6th, 2015 to a written premium of \$5530. The policy then terminated effective June 30th, 2015. The

policy had \$30 of payment fees (10 @ \$3). The total amount collected from the insured was \$5627 and \$559 was refunded making the net amount collected \$5068.

- (2) TPA068: Regarding TermIRPPA-1454708449, the Company sent the refund to the Named Insured's agent at their request as the insured was moving out of the country. It is the Company's understanding the agent was acting within the scope of their authority as agent for the insured.
- (3) TPA063: The signed request to cancel the policy indicated a requested effective date of 5/18/2015, which is one day prior to the date of the insured's signature. The Company cancelled the policy effective 5/18/2015. This was the date requested by the insured and agreed to by the Company as indicated in the Cancellation for Insured's request confirmation mailed to the insured on 5/29/2015. Nonetheless the Company will file a revised version of its manual to specifically allow for this type situation. We expect this will be included in an update we intend for December of 2017.

Company-Initiated Non-renewals – Automobile Policies

- (1) The Company respectfully reasserts its objection that this finding is unrelated to Automobile Non-renewals. The Notice of Non-renewal in no way references anything regarding exclusion of any driver, or even coverage provided to drivers generally. The Company respectfully requests that this violation be removed.

Notwithstanding the above objection, the Company responds as follows:

TPA073 TPA075

For the files referenced above, the Company respectfully disagrees with the examiners' findings that drivers have been excluded from coverage. Nonetheless, during the review period and prior to this review, the Company revised the language on the application and declarations page with respect to Additional Household Members. The language in question is no longer in use.

- (2) TPA075: At this time the Company is unable to provide proof of mailing beyond what has already been submitted. The refusal to renew notice was mailed by our vendor, LexisNexis using the FIRSt service. A copy of the PS form 3607R Mailing Transaction Receipt along with documentation from LexisNexis FIRSt was retrieved and provided to the Bureau in our response from May 17, 2016, and again in our response September 12, 2016.

Company-Initiated Cancellations – Homeowners Policies

NOTICE MAILED PRIOR TO THE 90TH DAY OF COVERAGE

- (1) **Section 38.2-1906 D.**

THO022: The Company disagrees. The examiners asked for an explanation to remove this violation. Please see as follows: the Insured paid a total amount of \$672. The total earned premium was \$435 and there was a \$10 policy fee. The \$227 refund was net of the total amount of money received. \$445 was the total amount still retained by the company. The examiners are using the numbers in ways they do not represent.

(2) Section 38.2-2113 A.

The Company provided a copy of the proof of mailing to the examiners to demonstrate that we had properly mailed this cancellation notice. The examiners state that the proof of mailing is not legible, however by any reasonable and objective standard this document is legible. As such, this violation should be removed as we properly mailed the cancellation notice and provided proof of same.

NOTICE MAILED AFTER THE 89TH DAY OF COVERAGE

(1) Section 38.2-2113 A: proof of mailing.

The Company disagrees. We provided a valid copy of the certificate of mailing for the two policies in question. The examiner alleges the violation stating that the USPS stamp provided by the post office smeared slightly. The USPS stamp is clearly legible and fully proves that we provided a proper certificate of mailing and are in full compliance with this section. We ask that these two violations be removed: THO019 and THO056.

(2) Section 38.2-2113 C

The Company uses a third-party vendor to provide notice to lienholders, and proof of the notice is retained by the company as required by Section 38.2-2113. The Company does not agree that its process is non-compliant, and requests that this violation be removed. However, the Company will address the Bureau's concerns:

- a. We will provide proper notice in all occasions.
- b. We will retain a copy of the lienholder cancellation notice in all circumstances.
- c. We will retain valid proof of mailing in all circumstances if the notice is mailed.

(5) Failing to comply with insurance contract.

The Company disagrees. It appears the examiners after our response simply changed the violation to a different one when we successfully proved the violation to be inaccurate. We provided proper notice in these circumstances demonstrated by the proof provided previously. Please remove: THO002, THO021, and THO056.

All Other Cancellations – Homeowners Policies

NONPAYMENT OF PREMIUM

(1) Section 38.2-1318: cancellation documentation

THO030: The Company disagrees. We provided a copy of the cancellation notice and the certificate of mailing to evidence proper mailing. The Company complied with all rules and regulations and this violation should be removed. The examiners stated that they failed to obtain the information while on-site. Access was provided while on-site and subsequently mailed to the examiners. Another copy of the notice sent to the insured is provided for your reconsideration.

(3) Section 38.2-2113 C

THO041 & THO044: The Company uses a third-party vendor to provide notice to lienholders, and proof of the notice is retained by the company as required by Section 38.2-2113. The Company does not agree that its process is non-compliant, and requests that these violations be removed. However, the Company will address the Bureau's concerns.

(4) Notice of cancellation to lienholder

The Company disagrees. It appears the examiners after our response simply changed the violation to a different one when we successfully proved the violation to be inaccurate. We provided proper notice in these circumstances demonstrated by the proof provided previously. Please remove: THO025, THO029, THO32, THO033, THO035, THO041 and THO044.

Company Initiated Non-Renewals – Homeowners Policies

(1) Section 38.2.2113 C: notice to lienholder

The Company uses a third-party vendor to provide notice to lienholders, and proof of the notice is retained by the company as required by Section 38.2-2113. The Company does not agree that its process is non-compliant, and requests that these violations be removed. However, the Company will address the Bureau's concerns.

CLAIMS REVIEW

Private Passenger Automobile Claims

(1) 14 VAC 5-400-30

CPA005, CPA087, CPA088: The Bureau indicates examiners found no reference to a Company practice on not requiring signed releases on certain BI claims. The Company respectfully disagrees, as this practice is not a violation of its own guidelines, or any other law or rule. The Company is providing language found in the Company's Work Portal referencing early settlements. Nowhere in this language does it indicate that a signed release is necessary. Therefore, the Company respectfully requests that these violations be withdrawn.

CPA072: This violation was withdrawn per the violation sheet returned from the Department. We are enclosing a copy of this withdrawn violation. Therefore, the Company respectfully requests that this violation be withdrawn in accordance with that review sheet.

CPA095: This violation was withdrawn per the violation sheet returned from the Department. We are enclosing a copy of this withdrawn violation. Therefore, the Company respectfully requests that this violation be withdrawn in accordance with that review sheet.

CPA096: This violation was responded to back on 5/2/2016 and a copy of this violation and the Company's response was provided again in our last Written Response. While the Company had provided a copy of the rental invoice as requested, the Company incorrectly referenced the violation as pertaining to estimate documentation rather than the rental invoice. Again, we are enclosing a copy of our response and supporting documentation. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA014: The Bureau indicates that the Company has failed to provide missing medical bills. Upon review of the file the Company found one medical bill from the insured in the amount of \$191.00. That bill is being paid with interest. Observations 1-4 on this same review sheet were withdrawn by the Bureau.

CPA028: This violation sheet was received from the Department on 6/28/2017. The Department indicates that the Company used the incorrect denial letter to the claimant and the Company agrees with this observation. However, the Department also indicates that the Company's file did not include the documentation concerning the insured's vehicle. The Company is attaching a copy of the insured's estimate as well as total loss evaluation.

CPA097: This violation was withdrawn per the violation sheet returned from the Department. We are enclosing a copy of this withdrawn violation. Therefore, the Company respectfully requests that this violation be withdrawn in accordance with that review sheet.

CPA018: This violation sheet was received from the Department on 7/17/2017. The Department indicated that the Company failed to have a copy of the rental bill in the claim file and that the file did not contain a copy of the check that was sent in the amount of \$4,938.19. Attached is a copy of the rental bill and proof of our payment of this rental bill, as well as proof of our payment of the Comprehensive claim. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA041: This violation sheet was received from the Department on 7/17/2017. However, this BOI reference number is found under two additional cites. The medical bills, AOB, and lien notifications were previously provided. These are being provided again. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA057: This violation sheet was received from the Department on 7/17/2017. This violation requested a copy of the rental bill as it was not contained in our file. We are now providing a copy of this rental bill. The Company's payment did not include payment of insurance charges. Coverage was discussed with the insured on 10/6/2014 and we attach a copy of those notes as well as a copy of our initial letter to the insured which outlines that additional insurance is not covered. However, while reviewing the invoice we noticed that the insured had paid \$14.09 in taxes that were not owed. Therefore, the Company is reimbursing the insured \$14.94 which includes the 6% interest.

CPA068: This violation sheet was received from the Department on 7/17/2017. This violation cites 6 observations: #1-The subrogation documents were located within the claim file and are being provided. #2. The letter of representation and our response to same were located within the claim file and are being provided again. Furthermore, we had received a withdrawn sheet on this observation which is also provided. #3 The rental bills were located and are being provided. #4. The Company is not clear on your comment that "no medical is in the file." Please clarify. There was no Medical Expense benefit on our insured's policy and no medical bill was ever presented by the insured. #5. The Verizon bill was sent by CMR on behalf of Verizon and is being provided. #6. We asked claimant [REDACTED] about his own possible coverage for his vehicle as we feared a potential excess situation at that time. Therefore, the Company respectfully requests that this violation sheet be withdrawn in its entirety.

CPA070: This violation sheet was received from the Department on 7/17/2017. This concerned the Company's initial contact letter to the insured which includes a FAQ sheet. The Department indicates that the FAQ sheet should not be included when the insured's policy does not have such coverage. The Company is in agreement with this and has begun to address changes to this letter with Corporate.

CPA093: This violation sheet was received from the Department on 7/17/2017. The rental bill is attached. Therefore, the Company respectfully requests that this violation be withdrawn.

(5a) 14 VAC 5-400-70 D

CPA078, CPA082, CPA091: These violations were addressed on the Restitution sheet as well as our Company UMPD audit submitted to the Market Conduct Section.

(5c) 14 VAC 5-400-70 D

CPA016: This violation referenced two cites with the same issue concerning the total loss evaluation. Under Cite 14 VAC 5-400-30 the Department included an observation that the total loss evaluation was not in the claim file. This violation was responded to and withdrawn by the Department. This violation also appears under 14 VAC 5-400-70 D. For ease we are providing a copy of the total loss evaluation again (this time under 14 VAC 5-400-70 D) and we are also providing a copy of the Withdrawn sheet under cite 14 VAC 5-400-30. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA053: This violation referenced two cites with the same issue concerning the total loss evaluation. Under Cite 14 VAC 5-400-30 the Department included an observation that the total loss evaluation was not in the claim file. This violation was responded to and withdrawn by the Department. This violation also appears under 14 VAC 5-400-70 D. For ease we are providing a copy of the total loss evaluation again (this time under 14 VAC 5-400-70 D) and we are also providing a copy of the Withdrawn sheet under 14 VAC 5-400-30. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA056: This violation requested the Total Loss Evaluation and payment information. The Total Loss evaluation had been retrieved and provided. We attach this information again. This is the only documentation that could be located which explains the total loss settlement with our insured. Therefore, the Company respectfully requests that this violation be withdrawn.

(5d) 14 VAC 5-400-70 D

CPA041: The Department indicates that the provider was not a party to the medical expense benefits coverage and therefore had no rights to receive benefits owed to the insured, and that there was no AOB executed by the insured which granted the Company permission to pay benefits to anyone other than the insured. Included with the medical lien information we had also provided the Consent and Financial Responsibility Forms, which included an Assignment of Benefits section signed by both insureds. We are attaching these again. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA086: The Department indicates that this violation remains in the report. The Company had previously agreed to this violation. Since the Company had not received the AOB signed by the insured, we mistakenly paid the medical provider directly in the

amount of \$1000.00. The Department is requesting we pay this amount to the insured directly although we had already made payment to the medical provider. This violation is addressed in the Restitution sheet.

(5e) 14 VAC 5-400-70 D

CPA066: The insured's rental period was from 2/4/2015 until 2/26/2015. The Bureau contends that Mercury should reimburse the insured for the CDW coverage as Mercury "did not advise the insured that CDW was not necessary until after the insured rented the vehicle. . . ." However, Mercury contends that no such conversation ever occurred between the Mercury claims adjuster and the insured. Mercury never advised the insured that CDW was not necessary. We are providing a copy of our claim notes. On February 3, 2015 the adjuster spoke to the insured and this conversation included a discussion about the rental coverage. Although the adjuster's notes only indicate that rental coverage was discussed, it is standard practice for the adjuster to advise the insured of the limits of that coverage and that charges for gas, mileage, or insurance would not be covered. Mercury is also providing a copy of our initial contact letter to the insured which was sent on December 22, 2014, prior to the rental car contract. This letter clearly outlines that the insured's Rental Car Benefit does not include mileage, gas charges, or additional insurance. The insured was properly advised regarding the CDW, and therefore the Company respectfully requests that this violation be withdrawn.

CPA072: The insured's rental was originally set up when the loss was initially reported to the Call Center on 2/4/15. The adjuster spoke to the insured the same day and verified the coverage limit and was told at that time the insured was already in the rental. Although the adjuster's notes only indicate that rental coverage was discussed, it is standard practice for the adjuster to advise the insured of the limits of that coverage and that charges for gas, mileage, or insurance would not be covered. Furthermore, an initial contact letter was sent to the insured on this same day. This letter clearly outlines that the insured's Rental Car Benefit does not include mileage, gas charges, or additional insurance. However, we are reimbursing the insured their CDW charges of \$89.95 plus interest.

CPA080: The Department indicates that the Company owes the insured the remaining rental expense of \$49.99. A check for \$49.99 was issued to our Insured on 6/5/2015. We have attached a copy of this check to the violation for your review. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA095: The Department indicates that the Company owes the insured one day of CDW as the insured was not advised that the CDW was not covered. However, the file notes indicate that the rental coverage was discussed. Although the adjuster's notes only indicate that rental coverage was discussed, it is standard practice for the adjuster to advise the insured of the limits of that coverage and that charges for gas, mileage, or insurance would not be covered. Furthermore, we are attaching a copy of our initial contact letter to the insured. This letter clearly outlines that the insured's Rental Car Benefit does not include mileage, gas charges, or additional insurance. This letter was

mailed eight days prior to the start of the insured's rental period. Therefore, the Company respectfully requests that this violation be withdrawn.

CPA097: The Department indicates that the Company owes the remaining \$77.25 in rental charges as the total of both bills was \$983.25 and the company paid \$906.00. The Department indicates that the rental coverage limit of \$600 per occurrence was not met. This rental contract included CDW charges which are not covered. Although the adjuster's notes only indicate that rental coverage was discussed, it is standard practice for the adjuster to advise the insured of the limits of that coverage and that charges for gas, mileage, or insurance would not be covered. However, we are issuing the additional payment of \$77.25 to the insured plus interest.

(13b) 38.2 510 C

CPA068: The Department indicates that the after-market parts notice referred to in the estimate is not the language required by the statute. The language in our estimate is verbatim from the statute, except that there is a comma between the words "like" and "kind" which is not in the statute. The addition of the comma does not invalidate the disclosure. Therefore, the Company respectfully requests that this violation be withdrawn. However, we will be addressing this correction with the Body Shops involved.

(14) 38.2-2204

CPA041- Please see our previous objection to this violation which is found under (1) and (5d).

CPA041: This violation sheet was received from the Department on 7/17/2017. However, this BOI reference number is found under two additional cites. The medical bills, AOB, and lien notifications were previously provided. These are being provided again. Therefore, The Company respectfully requests that this violation be withdrawn.

(5d) CPA041-The Department Indicates that the provider was not a party to the medical expense benefits coverage and therefore had no rights to receive benefits owed to the insured. The Department further indicates that there was no AOB executed by the insured which granted the Company permission to pay benefits to anyone other than the insured. Included with the medical lien information we had also provided the Consent and Financial Responsibility Forms, which included an Assignment of Benefits section signed by both insureds. We are attaching these again. Therefore, the Company respectfully requests that this violation be withdrawn.

(16c) Policy Provisions

CPA082: This violation sheet was recently received with a print date of 6/22/2017. The Department indicates that the Company incorrectly calculated the tag/title fee of \$13.00. The Department indicates that the Company should have charged a \$12.00 tag/title fee. This did result in an Overpayment of \$1.00.

CPA083: The Department indicates: "According to the Company's **April 13, 2015** file notes, the settlement included \$13.00 Tag/Title." However, the date of loss is **April 16, 2015** and the Company's claim file notes begin on **April 17, 2015**. We are providing a copy of the initial report of this loss to the Company and again, the letter sent to the insureds on May 29, 2015 clearly outlining the \$12.00 to be paid for the fees. Therefore, the Company respectfully requests that this violation be withdrawn.

Homeowners Claims

(1) **CHO025 – HO146479560: 3 violations. 1 & 2 withdrawn.**

3. "the claim file does not have documentation to support the payment of \$150.00 to the insured for a food loss."

Response: Mercury respectfully disagrees with the Bureau. Mercury paid \$150 for food loss as indicated by the Bureau. This payment was based solely upon a fair and reasonable verbal estimate given by the insured which was honored by Mercury. No detailed inventory of spoiled food was required by Mercury or provided by the insured. Mercury was within its rights to honor the insured's estimate and its action in doing so does not violate any provision of 14 VAC 5-400-70.

CHO037 – HO2027140171: "14 VAC 5-400-30: The letters of 4/20/15 and 5/20/15 displayed the incorrect insurance content insurance amount of \$40,000.00. The insured's policy has content insurance amount of \$30,000.00."

Response: Mercury respectfully disagrees with the Bureau. Neither of the documents indicated are letters. Both are reports from Mercury's Independent Adjuster to Mercury. The vendor's error was never communicated to the insured nor was it ever relied upon in the handling of the claim. It was a simple error by an independent contractor. This error does not constitute a violation of 14 VAC 5-400-30 as it does not constitute a failure to maintain all notes and work papers pertaining to the claim in the claim file in such detail that pertinent events and dates of such events can be reconstructed. Rather it was a simple transcription error by an independent contractor and played no role in the handling of the claim.

CHO068 – HO679933861: "The Company misrepresented its obligations to the insured under the replacement cost provision of his policy in the letters of December 12, 2014 and April 15, 2015. The letters do not provide the insured with the following information. You may make a claim for the difference between "actual cash value" and the full "replacement cost" of the dwelling within 6 months of the later of: (a) The last date you received a payment for "actual cash value" or; (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost"."

Response: Mercury respectfully disagrees with the Bureau. The Claim Acknowledgement Letter dated 09/16/2015, copy attached, sets forth the required language referenced by the Bureau.

CHO073 – HO1310083099: On 12/23/14, the insured submitted two estimates for repairs. The claim file was silent until 4/15/15 when the insured called to say she was ready to proceed with the masonry work. The Company response to the Preliminary report indicated that the insured had advised the adjuster that she did not wish to have the masonry work done during the winter. The claim notes did not include this conversation.

Response: Mercury concedes this conversation was not recorded in the log. Mercury disputes that the file was silent after receipt of the two estimates. Log entry on 12/23/2014 states:

“12/23/2014 7:31 AM - rec email from insd with 2 estimates attached for the step repair. 1-6450 the 2nd for 6114. emailed insd back and advised to let me know which contractor she will use and I will have adjuster secure a/p.”

While the conversation relating to the insured not wanting to have the masonry work done in the winter was not transcribed in the notes, it is common knowledge that concrete work is best avoided when there is danger of freezing. This and the insured’s statement that she was ready to proceed supports Mercury’s statement.

- (2) **CHO067 – HO471188777:** “The Company did not advise the insured regarding the policy conditions under which replacement cost could be paid.”

Response: The Bureau is incorrect. The Claim Acknowledgement Letter dated 8/31/15 (copy attached) provided full explanation of the policy conditions under which Replacement Cost would be paid.

CHO067 - HO1137279434: “The company did not advise the insured regarding the policy conditions under which replacement cost could be paid.”

Response: The Bureau is incorrect. The Claim Acknowledgement Letter dated 8/31/15 (copy attached) provided full explanation of the policy conditions under which Replacement Cost would be paid.

CHO067 – HO383236466: The Company misrepresented pertinent facts or insurance policy provisions. Mercury misrepresented coverage for mold resulting from a covered cause of loss as limited to \$5,000, rather than the Coverage A Limit.

Response: This loss occurred on 8/29/2015 as a result of a broken washer hose. Mold was discovered 10/20/15 when insured moved some contents. Despite our repeatedly advising the insured to do so, and having provided them with the names and numbers of emergency services contractors, no mold remediation had started as of 12/16/2015. While the adjuster did confuse the coverage available under the Limited Fungi Endorsement (\$5000) with the coverages available when mold ensues from a covered loss (Coverage

A limit of liability), it was harmless error as the insured was unresponsive to our contacts until we closed our file for lack of contact on 6/17/2016.

- (2a) **CHO074 – HO1495814160:** “The company misrepresented its obligations to the insured under the replacement cost provision of his policy in the letter of 12/19/14. The letter does not provide the insured with the following information. You may make a claim for the difference between "actual cash value" and the full "replacement cost" of the dwelling within 6 months of the later of: (a) The last date you received a payment for "actual cash value" or; (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury respectfully disagrees with the Bureau. The Claim Acknowledgement Letter dated 12/04/14, copy attached, sets forth the required language referenced by the Bureau.

CHO083 – HO909278217: “The company misrepresented its obligations to the insured under the replacement cost provision of his policy in the letters of August 12, 2015 and August 21, 2015. The letters do not provide the insured with the following information: You may make a claim for the difference between “actual cash value” and the full “replacement cost” of the dwelling within 6 months of the later of: (a) The last date you received a payment for "actual cash value"; or (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury respectfully disagrees. The information required by the Bureau was provided in the Claim Acknowledgement Letter dated 07/31/2015, copy attached.

- (4) **CHO051 & CHO074 (HO607548035 & HO1784522063):** The Company failed to send the insured a written denial.”

Response: Mercury concedes these violations. The required denial letters were not sent. Mercury will provide remedial training relating to 14 VAC 5-400-70-A concerning written denials.

CHO084 – HO94985751: “This claim was not paid and the claim file did not include a copy of the denial letter.”

Response: Mercury respectfully disagrees with the Bureau. This claim involved a covered loss in which the loss was less than the insured’s deductible. A letter was sent to the insured advising of the disposition of the claim and a copy is attached.

(5a) CHO12 – HO1272815247: Provide a check number and the date the check was issued for CHO012.

Response: Check for \$561.16 was originally issued 04/20/2016. The check was subsequently voided for an undetermined reason. On 03/17/2017 a payment for additional interest was made at the Bureau's direction. On 08/03/2017 we determined the original check for \$561.16 had been voided and reissued the check – copies of these documents are attached.

CHO074 - HO165978695: “Please provide a copy of the check for CHO074.”

Response: The requested copy of the check is attached.

CHO081 - HO1475829939: “The file does not support the Company’s conclusion that there was no coverage for this claim. The Company based its coverage decision on the insured’s statement that a downspout was clogged. The insured was not an expert. The Company had an obligation to investigate the loss but failed to do so.”

Response: Mercury respectfully disagrees with the Bureau's finding. The purpose of gutters and downspouts is to divert rainwater away from the foundation area of a dwelling to prevent surface and subsurface water from exerting pressure on or seeping or leaking through a foundation. Because the downspout was clogged, the gutters and downspout failed to perform as intended and rainwater overflowed from the gutters and was deposited at the foundation area of the home where it seeped beneath the surface of the ground and exerted pressure upon and seeped and leaked through the foundation causing the complained-of damage. This loss is expressly excluded by the terms of the policy. The role of the downspout is irrelevant. Once the water hit the ground and seeped and leaked through the foundation the loss was excluded. In upholding its decision the Bureau stated that Mercury unjustifiably based a coverage decision on the insured’s statement that “she thought a downspout was clogged.” In fact, there was no uncertainty as to causation on the part of the insured, the claim notes from 07/06/16 state:

"Spoke with [REDACTED] (703-[REDACTED]). [REDACTED] said a clogged downspout caused water to seep into her basement causing damage to the paneling. Explained coverage A and DED. Explained water seepage due to ground water was not a covered loss. The Insured understood and requested withdrawal of her claim."

Natural water which seeps through a basement foundation, as described by the insured, is not covered. It doesn't matter if it originated in a clogged gutter, as surface water or water beneath the surface of the ground.

CHO049 – HO599844781: “The insured withdrew this claim after discovering the loss would be less than his deductible of \$1000.00. The claim notes of 05/21/15 discussed the possibility that this claim could be a mold claim and covered under the Limited Fungi, Other Microbes or Rot endorsement. However, the claim file is silent as to whether the company contacted the insured to determine if this was indeed a mold claim not subject to the deductible.”

Response: Mercury concedes this violation, but notes it was unaware at the time this was handled that the Limited Fungi coverage would not be subject to a deductible. Mercury contacted the insured on 8/9/2017 and advised him of the error. The insured declined to pursue the matter as he incurred no expenses he wishes to be reimbursed for.

CHO078 - HO 1823524080: “The company misinformed the insured regarding her mold coverage. First, she had the mold "endorsement" and the cause of the mold was not relevant to the coverage. Second, a deductible does not apply to the loss.”

Response: Mercury concedes this violation. The insured has been contacted and advised Mercury he had incurred \$40 cost for mildewcide which he applied to the affected closet himself. Issued check for \$100 reasonable value of repair.

- (5b) **CHO004 - HO923359486:** “The file notes indicate the insured advised the IA that there were feces coming out of her toilet. Because the dec shows coverage for Limited Fungi and OTHER MICROBES, and these terms are not defined, the company should have covered this loss without deduction for the deductible. This represents an underpayment of \$1000.00 + \$53.00 interest = \$1053.00.

Response: The insured's deductible for this policy is \$500, not \$1,000 as indicated by the Bureau. Settlement was as follows:

RCV OF CONTENTS: 1392.02

LESS DEP: -552.70

LESS DED: -500.00

ACV AMT: 339.32

Mercury is willing to refund the insured's \$500 deductible and applicable interest. A check for \$530.00 was issued on 03/17/2017. Documentation is attached. That check was returned as undeliverable with no forwarding address. Documents attached.

- (5c) **CHO02 – HO770511591:** “The insured's basement flooded and commercial equipment was used to dry it out for three days. The company should contract the insured to determine the difference in his electrical bill during this time.”

Response: A letter was sent to the insured 04/06/16 (copy attached) advising the insured of their entitlement to recompense for additional electric expense but they did not respond. We called on 5/16/2016 and left a message which was not returned. We called again on 8/7/2017 and left a message.

CHO20 -- HO284844753: “The Company should contact the insured regarding the increase in electrical usage for the multiple fans and dehumidifiers that ran for three days to dry out the insured's basement due to a covered loss.”

Response: Mercury concedes this violation. See Log entries, below:

08/07/2017

11:50 AM

TC TO NI

8/7/17 @ 2:50PM

PLACED CALL TO NI [REDACTED] 423-[REDACTED]
L/M FOR NI EXPLAINING THAT WE HAVE REVIEWED HIS CLAIM AND DETERMINED THAT SHE MAY BE ELIGIBLE FOR ADDITIONAL BENEFITS FOR THE INCREASE IN ELECTRIC THAT MAY HAVE OCCURRED DURING THE TIME PERIOD WHILE THE MITIGATION EQUIPMENT WAS RUNNING. ADVISED NI THAT WE WOULD NEED HER TO SUBMIT HER ELECTRIC BILL FOR THE MONTH DURING WHICH THE EQUIPMENT WAS RUNNING AS WELL AS A BILL FOR THE SAME MONTH A YEAR PRIOR, IN ORDER FOR US TO DETERMINE THE INCREASE IN ELECTRIC. PROVIDED CLAIM # AND MY CONTACT INFO AND REQUESTED A CALL BACK TO DISCUSS IF SHE WAS INTERESTED IN PURSUING THESE ADDITIONAL BENEFITS.

CHO056 – HO20141971201: “The insured's basement was flooded and commercial fans were used to dry out the basement. The insured's electrical bill increased due to the multiple fans. The company should contract the insured about the increased electrical bill.”

Response: Mercury concedes this violation. See below.

04/14/2016

8:51 AM

Bureau review

From: Bill West

Sent: Thursday, April 14, 2016 11:51 AM

To: Steve Belmont <SBelmont@mercuryinsurance.com>

Subject: VAHO-[REDACTED]

Steve:

Please contact the insured on this file and offer to pay increase in electrical expense incurred for remediation subject to appropriate documentation.

Bill West
Property Claims Manager

05/16/2016

5:53 AM

status

Called insd and left 2 messages regarding additional monies that might be owed for electrical costs. Left contact info with insd to call me if he wishes to pursue.

08/07/2017

11:58 AM

TC WITH NI

8/7/17 @ 2:55PM

SPOKE WITH NI [REDACTED] 703-[REDACTED]

ADVISED NI THAT WE HAD REVIEWED HIS CLAIM AND DETERMINED THAT THERE MAY BE ADDITIONAL BENEFITS OWED TO HIM FOR HIS INCREASE IN ELECTRIC FOR THE TIME PERIOD WHEN THE MITIGATION EQUIPMENT WAS LEFT RUNNING. ADVISED NI THAT I WOULD NEED HIM TO SEND ME THE ELECTRIC BILL FOR THE MONTH THAT THE EQUIPMENT WAS RUNNING AS WELL AS A BILL FOR THE SAME MONTH THE PRIOR YEAR. NI STATED THAT HE HAD RECEIVED A LETTER FROM US PREVIOUSLY REGARDING THIS AND HE HAD NOT GOTTEN AROUND TO LOCATING THE ELECTRIC BILLS. NI ADVISED HE WOULD BE CONTACTING HIS ELECTRIC COMPANY AND WOULD SEND ME THE ELECTRIC BILLS FOR THOSE MONTHS AS WE DISCUSSED. PROVIDED NI WITH MY EMAIL ADDRESS AND CONTACT INFO TO SEND IT TO WHEN HE HAS THEM. NI THANKED ME FOR THE CALL.

CHO077 – HOI70320483: “05/09/16 This violation stays in. I've attached the three electrical bills for the insured that were found on the company's system under the claim number under review.”

Response: Having located the electrical bills, our calculations are as follows: Bills provided: Due Date: 01/13/2015 - \$358.09 : 02/13/2015 - \$371.02: 04/13/2015 - \$651.88 (month when drying occurred). Average Monthly Bill: 01/2015 - \$358.09: 02/2015 - \$371.02: Total - \$729.11. $729.11/2=364.56$ \$651.88 - \$364.56 = \$287.32.

Payment in the amount of \$304.55 was issued 3/17/2017 reflecting the base amount plus 6% accrued interest. Documents attached.

CHO012 – HO1596825660: “The claim notes of 11/14/14 indicate the insured stayed in a hotel for 1 or 2 nights due to the covered loss. The company failed to offer the insured an ALE amount that was fair and reasonable for the covered loss of 11/03/14. The company should contact the insured regarding expenses he incurred for ALE such as hotel, meals, mileage, and incidentals.”

Response: The claim note of 11/14/14 was in error. The insured did not spend any time in a hotel. The insured's separate section of the structure was unaffected by the fire. The Claims Manager contacted the insured personally on 08/04/2017 and asked them specifically whether they had left the home or stayed in a hotel as a result of the loss and the insured responded in the negative. The insured can be contacted directly if verification is deemed necessary.

- (5d) **CHO056 - HO694399715:** “The RTEC Treecare provided the company with a proposal totaling \$7,500.00 for removal of the tree which includes the crane, removal of the debris and the removal of the stump. The company did not include payment for the removal of the stump of \$1,500.00. The insured's policy does not exclude the removal of the stump. This resulted in an undercharge of \$1,500.00.”

Response: Mercury concedes this error and has issued payment in the amount of \$1,685.40 reflecting the underpayment of \$1,500.00 plus 6% accrued interest for two years. Documentation attached.

CHO049 – HO465283959: Violation in this Section withdrawn. ChO049 appears previously under Section 5a under review sheet HO599844781.

- (6c) **CHO003 – HO1699494161:** “The Company did not advise the insured regarding the policy conditions under which replacement cost could be paid.

Response: Mercury respectfully disagrees with the Bureau's conclusion. Mercury's letter dated September 12, 2014, copy attached, provides complete information on the policy conditions under which replacement cost benefits will be paid. "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts.”

CHO005 – HO1870334585: “The letter of October 1, 2014 did not provide the additional policy provision that states “or the date of entry of any court order declaring your right to full replacement cost”.

Response: Mercury respectfully disagrees with the Bureau's conclusion. Mercury's letter dated September 23, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) *the date of entry of any final court order declaring your right to full replacement cost*, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO013 – HO542927385: The Company failed to accurately represent its obligations to the insured regarding the replacement cost. The letter dated 11/25/14, page 2, state the insured can "make a claim for loss on an actual cash value basis; and then make a claim within 180 days after the loss..." The letter should read: 6 months of the later of (a) The last date you received a payment for "actual cash value" or; (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated November 7, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO015 – HO208836479: The Company failed to accurately represent its obligations to the insured regarding the replacement cost. The letters dated 11/19/14 and 11/21/14, page 2, indicate the insured can make a claim for loss on an actual cash value basis; and then make a claim within 180 days after the loss. The letter should read: 6 months of the later of (a) The last date you received a payment for "actual cash value" or (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated November 12, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also

need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO016 – HO2110092011: The letter to the insured regarding the personal property ACV stated she had 180 days to recover depreciation. This is incorrect. The time limit is 6 months from the last ACV payment.

Response: Mercury's letter dated December 3, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO020 – HO1683690981: The letters of 1/9/14 and 1/14/14 informs the insured he has 180 days after the loss to submit replacement/repair invoices for recoverable depreciation, this is incorrect. If the insured had replacement cost provision he would have 6 months of the later of:

- (a) The last date you received a payment for "actual cash value"; or
- (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated December 22, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO023 – HO1463467041: The letter to the insured regarding the personal property ACV stated she had 180 days to recover depreciation. This is incorrect. The time limit is 6 months from the last ACV payment.

Response: Mercury's letter dated May 12, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO025 – HO2025031561: The letter dated 02/03/15 misrepresents its obligations to the insured regarding her replacement cost provision of her policy. The letter states "This depreciation amount is fully recoverable once you have completed your repairs and have submitted your repair invoices for our review for consideration within 180 days after the loss." The letter should read: You may make a claim for the difference between "actual cash value" and the full "replacement cost" of the dwelling within 6 months of the later of:

- a) The last date you received a payment for "actual cash value"; or
- b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated January 14, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO026 – HO1216790883: The Company failed to accurately represent its obligations to the insured regarding the replacement cost. The letter dated 3/18/15, page 2, indicates the insured can make a claim for loss on an actual cash value basis; and then makes a claim within 180 days after the loss. The letter should read: You may make a claim for the difference between "actual cash value" and the full "replacement cost" of the dwelling within 6 months of the later of: (a) The last date you received a payment for "actual cash value"; or (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated January 21, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO028 – HO1268568965: The Company failed to accurately represent its obligations to the insured regarding the replacement cost. The letter of 03/22/16, page 2, indicates the insured has 180 days, for any additional liability under replacement cost, after you have repaired or replaced the property. The letter should read "...within 6 months of the later of: (a) The last date you received a payment for "actual cash value"; or (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated January 28, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO037: "The letter of May 20, 2015 did not properly represent the replacement cost provisions of the policy."

Response: Mercury's letter dated March 27, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO052 – HO271618971: The letters dated June 16, 2015 and June 17, 2015 misrepresents its obligations to the insured regarding her replacement cost provision of her policy. The letters state "This depreciation amount is fully recoverable once you have repaired your dwelling and have submitted the repair receipts for our review for consideration within 180 days after the loss." The letter should read: You may make a claim for the difference between "actual cash value" and the full "replacement cost" of the dwelling within 6 months of the later of (a) The last date you received a payment for "actual cash value"; or (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated June 2, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO058 – HO1554597149: "The letter of August 10, 2015 did not properly represent the replacement cost provisions of the policy."

Response: Mercury concedes that the letter of August 10, 2015 did not properly convey the replacement cost provisions of the policy, however, the information was clearly

accurately communicated to the insured as the insured made a timely and correct demand for replacement cost benefits and was paid the entire amount claimed, a total of \$3,509.05 of an available \$3,539.51 on January 6, 2016.

CHO065 – HO240120407: “The letter of September 21, 2015 did not properly represent the replacement cost provisions of the policy.”

Response: Mercury's letter dated August 24, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO068 – HO679933861: The Company misrepresented its obligations to the insured under the replacement cost provision of his policy in the letters of December 12, 2014 and April 15, 2015. The letters do not provide the insured with the following information. You may make a claim for the difference between "actual cash value" and the full "replacement cost" of the dwelling within 6 months of the later of: (a) The last date you received a payment for "actual cash value" or; (b) The date of entry of a final order of a court of competent jurisdiction declaring your right to "replacement cost".

Response: Mercury's letter dated September 16, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last.

CHO074: “The Company did not advise the insured regarding the policy conditions under which replacement cost could be paid.”

Response: Mercury's letter dated December 4, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO083: “The Company did not advise the insured regarding the policy conditions under which replacement cost could be paid.”

Response: Mercury's letter dated July 31, 2015, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

CHO004: “The Company did not advise the insured regarding the policy conditions under which replacement cost could be paid.”

Response: Mercury's letter dated September 15, 2014, a copy of which is attached, provides complete instructions on the steps necessary to recover replacement cost benefits under the terms of the policy: "In order to recover depreciation under RCC, you will need to submit your replacement cost claim within 6 months of (i) the last date you received an "actual cash value" payment or (ii) the date of entry of any final court order declaring your right to full replacement cost, whichever shall occur last. You will also need to provide documentation confirming that the work has been completed, along with paid repair receipts."

- (7) **CHO022 – HO1567764962:** “The Company cannot rely on a vendor to manage the insured’s claim and determine additional damages.

Response: Mercury disagrees with the Bureau's conclusion. Mercury sent the insured a letter along with an estimate and a check on January 28, 2015. The letter was clearly received as the enclosed check was cashed. The letter expressly invited the insured to contact the adjuster if there were any questions relating to the claim. The insured never acted upon the instruction to call the adjuster. We have attempted to re-contact the insured but calls have not been returned. Letter was sent to the insured 8/11/2017 requesting contact, copy attached.

- (8) **CHO073 – HO1310083099: See response under Section (1).**

- (9) **CHO079 – HO316295576:** The Company made claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage(s) under which payments were made. The check from the dwelling did not state the payment was for the

dwelling. The check for the personal property did not state that the check was for contents.

Response: Mercury concedes these two errors.

CHO003 – HO509356664: The Company made claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage(s) under which payments were made.

Response: Mercury concedes this error.

CHO055 – HO807466712: The Company made claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage(s) under which payments were made. The letter dated August 5, 2015 shows the incorrect coverage the payment was made under. The letter shows payment under Coverage A-Dwelling, this is a renter's policy with a Valuable Items Plus endorsement. The payment was made under the personal property.

Response: Mercury concedes this error which is attributable to the claim adjuster's failure to modify a payment transmittal letter. The check was properly completed and coded as being made under the Valuable Items Plus coverage, however the transmittal letter incorrectly attributes the payment to Coverage A, Dwelling.

(10b) CHO047 – HO1664697732: The Company failed to abide by the provisions of the policy by failing to include the lienholder on the check issued in payment of the insured's claim. The declaration page shows two mortgage companies on this policy. The company failed to include both mortgage companies on checks.

Response: Mercury concedes these five violations.

CHO015 – HO1150396676: The Company failed to include the mortgagee name on the checks for coverage A.

Response: As a matter of internal policy, Mercury does not include mortgagees on Homeowners Claims Coverage A payments in a net amount of less than \$5,000. Mercury assumes the risk on these claims that the repairs will not be completed and that the mortgagee will demand payment for impairment of their lien. In the subject case, the initial Coverage A payment was \$4,310.15, below the \$5,000 threshold. The second payment of \$1,466.97 raised the amount above the threshold, however as the repairs had been completed, *the mortgagee's lien was not in peril of being impaired. For this reason Mercury does not proceed on the basis of anticipated replacement cost*

payments. This policy has been established for the purpose of avoiding inconvenience to our policyholders and providing the best possible service.

In our experience, substantially all insurers establish a threshold figure below which they do not include lienholders on checks. Mercury recently, unilaterally and without notice to either policyholders or regulators, increased this amount to \$10,000. This practice represents a risk undertaken by Mercury in order to provide the best possible service to our customers in the Commonwealth. The only benefit to Mercury is improved customer satisfaction. If the Bureau counts this practice as a violation we will resume including lienholders on all Coverage A checks on Virginia claims, regardless of amount.

CHO026 – HO1775135344: The Company failed to include the mortgagee name on the checks for coverage A.

Response: In order to provide the best possible customer service, it is Mercury's policy not to include mortgagees on checks issued to insureds if the claim is less than \$5,000. In the interest of enhanced service, Mercury is willing to assume the risk that repairs will not be completed on these claims and that they will have to satisfy claims of the mortgagees for impairment of their liens. In the subject claim, the checks made payable directly to ServPro were for work that was already completed and found to be satisfactory, so the cleaning, etc. did not represent a potential impairment of the mortgagee's lien. The check to the insured for structural repairs in the amount of \$4,499.55 was below the \$5,000 threshold, so the mortgagee was not included.

In our experience, substantially all insurers establish a threshold figure below which they do not include lienholders on checks. Mercury recently, unilaterally and without notice to either policyholders or regulators, increased this amount to \$10,000. This practice represents a risk undertaken by Mercury in order to provide the best possible service to our customers in the Commonwealth. The only benefit to Mercury is improved customer satisfaction. If the Bureau counts this practice as a violation we will resume including lienholders on all Coverage A checks on Virginia claims, regardless of amount.

CHO074 – HO1244945552: The Company failed to include the mortgagee name on the checks for coverage A.

Response: In order to provide the best possible customer service, it is Mercury's policy not to include mortgagees on checks issued to insureds if the claim is less than \$5,000. In the interest of enhanced service, Mercury is willing to assume the risk that repairs will not be completed on these claims and that they will have to satisfy claims of the mortgagees for impairment of their liens. In the subject claim, the check to the insured for structural repairs in the amount of \$4,226.00 was below the \$5,000 threshold, so the mortgagee was not included.

In our experience, substantially all insurers establish a threshold figure below which they do not include lienholders on checks. Mercury recently, unilaterally and without notice

to either policyholders or regulators, increased this amount to \$10,000. This practice represents a risk undertaken by Mercury in order to provide the best possible service to our customers in the Commonwealth. The only benefit to Mercury is improved customer satisfaction. If the Bureau counts this practice as a violation we will resume including lienholders on all Coverage A checks on Virginia claims, regardless of amount.

- (10c) **CHO062 – HO1461765341:** The insured submitted a ceiling fan on their personal property list. The adjuster included a ceiling fan in their dwelling estimate. This appears to be a duplicate payment for the ceiling fan. This resulted in an overpayment of \$47.07.

Response: Mercury concedes the accuracy of the Bureau's assessment. This claim was overpaid due to the duplicate payment for the ceiling fan.

REVIEW OF FORMS

Automobile Policy Forms

POLICY FORMS USED DURING THE EXAMINATION PERIOD

- (1) FPA022: The Company acknowledges this finding. The Company no longer writes or renews policies in this Company and all policies have been transitioned to American Mercury Insurance Company.

FPA023: The Company filed and made available a rate classification statement in compliance with § 38.2-2214. Please see the attached rate classification statement.

- (3a) FPA031: The Company acknowledges this finding. Form PP0199 applied to Mercury Casualty Company. The Company no longer renews policies in this Company.

REVIEW OF STATUTORY NOTICES

Statutory Vehicle Notices

§ 38.2-517 A: The Bureau is requesting that we provide the estimated completion date for revising the notice to compliance with this Code. The Company had previously responded to this violation involving two claims. The Company disagrees that any violation occurred here. The statute does not require that a “script” be maintained, and the company does comply by making the required disclosure at the time of referral. When reporting a vehicle glass or windshield only claim via our Customer Service number (1-800-503-3724), the caller is instructed to press 1. After pressing 1, the caller is connected to All Star Glass Services which identifies themselves as “All Star Glass Services Auto Glass Administrators for Mercury Insurance.” The disclosure is thus available for review by examiners.

PART TWO – CORRECTIVE ACTION PLAN

Rating Review

- (1) Please see the attached restitution spreadsheet.

Termination Review

- (1) Please see the attached restitution spreadsheet.

Claims Review

- (1) Please see the attached restitution spreadsheet.
- (11) The requested information has been provided to the Market Conduct Section.

Review of Statutory Notices

- (1) The updated form is expected to be deployed in September 2017.
- (2) The updated form is expected to be deployed in September 2017.

PART THREE – RECOMMENDATIONS

Rating

Thank you for the recommendations. We have reviewed them and plan to implement them in December 2017.

Terminations

**CORRECTIVE ACTION
PLAN
Virginia Market Conduct Examination**

Project Plan Status	Date Plan Updated
Plan Initiated	8/11/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Correct the errors that caused the underpayments and overpayments, and send the amount of the underpayment to insureds and claimants.	Laura Wade	1	3/8/2017	Completed	The staff has been trained on these violations that resulted in under or overpayments.
Include six percent (6%) simple interest in the amount paid to the insureds and claimants.	Laura Wade	2	3/8/2017	Completed.	see above.
Complete and submit to the Bureau the enclosed file titled "Claims Underpayments Cited During the Examination". By returning the completed file to the Bureau, the companies acknowledge that they have paid the underpayments listed in the file.	Laura Wade	3	Sent with our Examination Response	Completed	All Claims underpayments have been addressed and are noted on the Restitution sheets.

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Document claim files so that all events and dates pertinent to the claim can be reconstructed.	Laura Wade	4	n/a	Completed	<p>While the Department cited 49 violations related to Proper documentation (14VAC5400-30/1), the Company respectfully challenged all but 4 of these violations. Documentation noted such as repair estimates, rental bills, medical bills, etc were housed either in our various supporting systems with access provided to the Department at the time of the Examination or were within the Claims files themselves. The Examiners at the time of the Examination requested that we access our systems and retrieve the documents for them which we did.</p> <p>Property (HO) Claims: While the Bureau cited 19 violations related to proper file documentation under 14 VAC 5400-30/1, Mercury disputed 12 alleged violations, conceded 6 violations and did not receive a review sheet for CHO037. Of the conceded violations, all were attributable to the implementation of a new electronic claims system and systems training has rectified the issues.</p>
Document the claim file that all applicable coverages have been discussed with the insured. Particular attention should be given to deductibles, mtal benefits under UMPD and Transportation Expense coverage, and Medical Expense coverage.	Diane Braun	5		Completed training in April 2017	The staff previously utilized a Company form C-181 to note coverages that were addressed. Many of the Claim file notes indicated the C-181 was completed. Going forward, the staff will be instructed on ensuring that their notes clearly indicate when coverages are addressed.
Offer the insured an amount that is fair and reasonable as shown by the investigation of the claim, and pay the claim in accordance with the insured's policy provisions.	Laura Wade	6	At time of Examination	Complete	<p>Many of the violations cited in this section were respectfully challenged. However, some of these violations related to proper sales tax on our Total Loss settlements. Moving forward, Material Damage Department will be alerting the Total Loss Department of any changes to VA sales tax. Furthermore, the Examiners issued violations for our handling of our UMPD claims. While we were paying the correct amounts on our UMPD claims, the Department requires that in those instances where there is Collision as well as UMPD coverage, that we pay the claim under Collision and then pay any difference in the deductible amounts under the UMPD coverage. Corrective measures were taken at the time of the Examination.</p> <p>Property (HO) Claims: 11 Of 18 cited violations of 14 VAC 5-400-70-D are disputed. Several violations related to the Limited Fungi Endorsement which no longer appears on VA policies. The remaining issues have been addressed by continuing training.</p>

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Provide copies of repair estimates prepared by or on behalf of the company to insureds and claimants.	Laura Wade	7		Complete	Statutory requirement training occurred in April 2017
Properly represent pertinent facts or insurance provisions relating to coverages at issue.	Laura Wade	8			Auto Claims: Only 2 violations were noted under this topic and both were respectfully challenged. Property (HO) Claims. In several instances, early claims subject of this review employed settlement letters which did not conform to VA law relating to claiming Replacement Cost Benefits. This has been corrected by implementation of an automated Claims Correspondence system which automatically incorporates correct language.
Disclose the required aftermarket parts notice to the vehicle owner on the repair or in the separate document.	Lee Frazer & Edgar Dejesus	9	3/1/2017	Complete	All Mitchell profiles have been updated to include the Statutory language to ensure compliance moving forward.
A \$200 deductible under UMPD does not apply when the Uninsured Motorist is clearly identified	Laura Wade	10	6/28/2017	Complete	The staff have now been trained on this issue.

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



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October 27, 2017

VIA UPS 2nd DAY DELIVERY

Laura A. Wade
Division Manager-Claims
Mercury Insurance
686 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807

Re: Market Conduct Examination
Mercury Casualty Company (NAIC# 11908)
American Mercury Insurance Company (NAIC# 16810)
Examination Period: September 1, 2014 – August 31, 2015

Dear Ms. Wade,

The Bureau of Insurance (Bureau) has reviewed the August 23, 2017 response to the Preliminary Market Conduct Report (Report) of Mercury Casualty Company and American Mercury Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

PART ONE – EXAMINERS' OBSERVATIONS

Automobile New Business Rating

- (3a) Review sheet number R&UNBPPA-413789808 was withdrawn and a violation for RPA050 has been added to this section of the Report. The Company applied a 3 Year Accident/Violation and 5 Year Accident Free Discount that is not on file with the Bureau.
- (3b) The violation for RPA045 remains in the Report. The Company responded that the violation on January 10, 2013 was disclosed by the insured and manually entered by the agent, not the Company. The agent is a representative of the Company; therefore the Company is responsible for the agent's actions. The Company also responded that it is entitled to rely upon information expressly provided by the insured and it is reasonable for the

Company to believe the insured did not disclose a violation for which they were not convicted. Section 38.2-1904 D of the Code of Virginia states that, "no insurer shall use any information pertaining to any motor vehicle conviction or accident to produce increased or surcharged rates above their filed manual rates for individual risks for a period longer than 36 months." Motor vehicle violations that are self-reported on an application for automobile insurance typically lack pertinent details necessary to be considered as a motor vehicle conviction. Self-reported violations rarely include a conviction date or the specific code that the insured violated. The Bureau strongly suggests that the Company surcharge for motor vehicle convictions where there is evidence of fault and/or conviction, such as convictions that appear on motor vehicle reports (MVR). This practice will prevent the possibility of surcharging for duplicate convictions and will result in accurate surcharging based upon the conviction code listed on the MVR.

- (3d) The violation for RPA009 remains in the Report. The Company's policy file did not include any evidence that the Current Carrier report was incorrect. The Current Carrier Report showed that the insured had continuous coverage without a lapse. However, the Company tiered the policy with a lapse in coverage that occurred during the prior policy, not between the prior policy and new policy with Mercury. The policy file was not documented to indicate the agent had obtained information that differed from the Current Carrier report.

The violation for RPA010 remains in the Report. The Current Carrier report reflected prior policy limits of 100/300, but the Company tiered the policy with prior limits of 25/50. The policy file was not documented to indicate the agent had obtained information that differed from the Current Carrier report.

The violations for RPA021, RPA038, and RPA057 remain in the Report. The Company has acknowledged that the application for insurance did not clearly record the current/previous insurance carrier information. The Company also provided an updated copy of the Application for Auto Insurance for review. Since the Company does not have evidence that the insured had a lapse in coverage, the above mentioned policies have been rated with Tiers that correspond to Lapse Days: 0. The Bureau acknowledges that the Application for Auto Insurance has been updated to include current/previous insurance carrier information.

The violation for RPA023 remains in the Report. The policy file had underwriting notes that stated POP OK and provided a prior policy inception date of February 20, 2013, but the Company tiered the policy with a lapse in coverage. The policy file was not documented to indicate the agent had obtained information that differed from the underwriter.

The violation for RPA024 remains in the Report. The Current Carrier report reflected a lapse in coverage, but the Company tiered the policy with a prior policy with no lapse in coverage. The policy file was not documented to

indicate the agent had obtained information that differed from the Current Carrier report.

The Bureau acknowledges that the revised application records a lapse between the previous carrier and the new Mercury policy. However, the revised application fails to record a lapse during the prior term with the previous carrier, which the Company also used to determine the tier.

- (3e) The violations for RPA006, RPA008, RPA023, RPA034 and RPA044 remain in the Report. Upon reviewing the information on the application, the Company should have addressed the discrepancies with the insured. It appears that the New or Used field in the Company's application automatically defaulted to New regardless of the purchase date indicated. Since the insured entered a specific purchase date in the application, which clearly differed from the New or Used field, the Company should have verified the information and rated the policies accordingly.

After further review, the violation for RPA050 has been withdrawn from the Report. The Report has been updated to reflect this change.

- (4) The violations for RPA006, RPA013, RPA024, RPA026, RPA029, RPA032, RPA036, RPA037, RPA039, RPA040, RPA041, RPA050, RPA057, RPA059, RPA060, and RPA068 remain in the Report. Although it may not have been the Company's intention to exclude coverage for drivers, the language in the application indicated coverage would not be provided for drivers listed in the Non-Drivers section. The Bureau acknowledges that the Company has removed the language from its application for future risks.

The Company's revised application has a section titled Driving and Loss History. This section indicates that the Company will surcharge for all accidents listed, unless the insured provides additional information that the accident was not-at-fault. Please note that § 38.2-1905 A states, "No insurer may increase its insured's premium or may charge points under a safe driver insurance plan to its insured as a result of a motor vehicle accident unless the accident was caused either wholly or partially by the named insured, a resident of the same household, or other customary operator." It is the insurer's responsibility to obtain information and determine fault prior to surcharging a policy for an accident.

Automobile Renewal Business Rating

- (1) These violations remain in the Report. The Company has corrected its declarations pages to now list only those forms and endorsements that apply to the coverage on the policy, in accordance with § 38.2-305 A 6 of the Code of Virginia.

- (3a) After further review, the violation for RPA151 involving the multi policy discount has been withdrawn from the Report. The Company provided a copy of the insured's homeowner policy, which made the policy eligible for the Multi Policy discount.
- (3b) The violation for RPA140 remains in the Report. The Company provided a copy of the insured's MVR, but redacted the driver and policy identifying information. As such, the Bureau cannot verify that the convictions belong to the driver or policy under review.
- (4) The violations for RPA136 and RPA141 remain in the Report. Although it may not have been the Company's intention to exclude coverage for drivers, the language in the application indicated coverage would not be provided for drivers listed in the Non-Drivers section. The Bureau acknowledges that the Company has removed the language from its application for future risks.

Homeowners New Business Rating

The Companies are inconsistent in relying upon the inspection reports maintained in their file documentation. The Companies should explain how it is determined when the inspection reports are reliable.

- (2) The Company addressed the New Business violations of § 38.2-502 1, in the Renewal Business section of its response. We are responding to these violations here where it is appropriate. Section 38.2-502 1 of the Code of Virginia requires that the alleged misrepresentation occur in all of the items the Company has stated in its response. We have cited the Company because the "**statement**" on the declaration page misrepresents benefits/advantages of the insurance policy. The violations for RHO005, RHO006, RHO009, RHO011, RHO012, RHO014, RHO015, RHO018, RHO019, RHO022, RHO025, RHO026, RHO027, RHO031, RHO033, RHO040, RHO041, RHO043, RHO044, RHO046, and RHO50 remain in the Report.
- (3b) After further review, the violation for RHO008 has been withdrawn from the Report.

The violation for RHO036 remains in the Report. The Company stated in its response that only the copper was stolen from the A/C unit. However the policy file provided by the Company fails to support that statement. The policy file only stated the description of the loss as "AC Unit was stolen—police report was filed." For the violation to be reconsidered, the Company should provide documentation to support the claim being classified as a malicious mischief claim rather than a theft claim.
- (3c) After further review the violation for RHO017 has been withdrawn from the Report.

The violations for RHO037 remain in the Report. For reconsideration, the Company should provide the declarations pages for the primary residence that has a 2015 effective date.

The violation for RHO050 remains in the Report. The Company failed to provide the tax records that document the year built to be 1990. The CoreLogic Report provided by the Company in its previous response shows both 1990 and 1994 but the policy file did not indicate why the 1990 date was used over the 1994 date.

- (3d) After further review, the violation for RHO004 has been withdrawn from the Report.

After further review, the violation for RHO022 has been withdrawn from the Report

The violation for RHO041 remains in the Report. For reconsideration, the Company should provide the CoreLogic report confirming the construction type of the insured premises.

- (3e) The violations for RHO001, RHO003, RHO018, RHO028, RHO031, RHO033, RHO037, RHO038, RHO042, RHO047, and RHO048 remain in the Report. During the examination period, ISO was not authorized to file the Public Protection Class (PPC) information on the Company's behalf. The Company was informed of this by the Bureau during the review of SERFF filing number MERY-129463973 made by the Company. The Company independently filed the ISO PPC information. The independently filed information remains on file until the Company files amendments or changes its filing authorization to allow someone else to file PPC information on its behalf. This means any amendments made by ISO must be physically filed by the Company for this information to be available for the Company's use.

Homeowners Renewal Business Rating

- (2) The Company only referenced the New Business violations of § 38.2-502 1 of the Code of Virginia. These violations have been addressed in item (2) above. As the Company has not disagreed with the Renewal Business files; the Bureau has not responded to any of the violations in this section. However, the same statement as outlined in (2) of the New Business section would apply to this section as well.
- (3a) The violation for RHO083 remains in the Report. The Company references spreadsheets that were not provided with its response.
- (3c) The violation for RHO068 remains in the Report. The Company failed to use the correct factor for "Coverage A Limit and the Presence of Mortgage." The

Coverage A limit was \$283,000 and there was no mortgage on the policy being reviewed.

- (3d) The violations for RHO053 and RHO54 remain in the Report. The Company has failed to provide any additional information or documentation for the violations to be reconsidered.

The violation for RHO068 remains in the Report. Virginia is a file and use state. The expense fees on file with the Bureau at the time the policy became effective should have been applied to the policy.

After further review, the violation for RHO093 in reference to the insured's age has been withdrawn from the Report.

- (3f) The violations for RHO052, RHO054, RHO060, RHO061, RHO063, RHO080, RHO081, RHO097, RHO098, RHO104, RHO114, and RHO124 remain in the Report. During the examination period ISO was not authorized to file the Public Protection Class (PPC) information on the Company's behalf. The Company was informed of this by the Bureau during the review of SERFF filing number MERY-129463973 made by the Company. The Company independently filed the ISO PPC information. The independently filed information remains on file until the Company files amendments or changes its filing authorization to allow someone else to file PPC information on its behalf. This means any amendments made by ISO must be physically filed by the Company for this information to be available for the Company's use.

Terminations

Automobile Cancellation Notices Mailed Prior to the 60th Day

- (1) The violation for TPA020 remains in the Report. The Company's system contains the following note: "ATTENTION FR REQUIRED –SR22". If this note was not accurate, the file should have included a correction. No correction exists.

There are two violations for TPA008. After further review, the violation for § 38.2-502 1 of the Code of Virginia has been withdrawn from the Report.

- (4) The violations for TPA008 and TPA014 remain in the Report. The Company's continued disagreement regarding the driver exclusion on the declaration page and application is in direct conflict with Virginia State Corporation Commission Settlement Orders, Case No. Ins. 2007-00375 and Case No. Ins. 2010-00101, wherein the Company attested to the removal of this language in both December 17, 2007 and June 8, 2010.

Automobile Cancellation Notices Mailed After the 59th Day

- (1) After further review, the violation for TPA019 has been withdrawn from the Report. The Company has provided a legible proof of mailing.

Automobile Nonpayment of Premium Cancellations

- (1a) After further review, the violations for TPA028 and TPA046 have been withdrawn from the Report. The Company has provided legible proof of mailings.
- (2b) The violation for TPA049 remains in the Report. At no time during the examination process did the Company advise the Bureau of a practice wherein lienholder notices were held in abeyance pending possible reinstatements.

Automobile Insured Requested Cancellations

- (1) After further review, the violation for TPA065 has been withdrawn from the Report.
- (2) The violation for TPA068 remains in the Report. The agent was not a party to the contract of insurance and as such, had no financial interest in either the payment of the premium or the refund of the premium.
- (3) The violation for TPA065 was withdrawn in the Bureau's previous response dated June 22, 2017.

Automobile Non-Renewals

- (1) The violations for TPA073 and TPA075 remain in the Report. The Company's continued disagreement regarding the driver exclusion on the declaration page and application is in direct conflict with Virginia State Corporation Commission Settlement Orders, Case No. Ins. 2007-00375 and Case No. Ins. 2010-00101, wherein the Company attested to the removal of this language on both December 17, 2007 and June 8, 2010.
- (2) The violation for TPA075 remains in the Report. The Company utilized bulk mailing. Bulk mailing was not permitted in Virginia at the time of this cancellation and therefore the proof of mailing is not valid.

Homeowner Cancellation Notices Mailed Prior to the 90th Day

- (1) The violation for THO022 remains in the Report. The billing screens obtained from the Company's system during the Bureau's on site review show that the insured made four payments (\$281.25, \$52.25, \$106.65 and \$5.00) totaling

\$445.00. The Company has not provided evidence of \$672.00 in payments made by the insured as stated in the Company's response. If the Company has evidence of additional payments, please provide the additional payment information for reconsideration of this violation.

- (2) The violation for THO003 remains in the Report. The USPS stamp is not legible. The Company stated in its first response that a copy of the proof of mailing was provided; however, the examiners were unable to locate the proof of mailing in the exhibits. The Company needs to provide a legible copy of the proof of mailing for reconsideration.

Homeowner Cancellation Notices Mailed After the 89th Day

- (1) The violations for THO019 and THO056 remain in the Report. The USPS stamps are illegible. For reconsideration the Company should provide proof of mailing with legible USPS stamps.
- (2c) The violation for THO021 remains in the Report. The Company should provide valid proof of mailing the notice to the lienholder.
- (4) The Company incorrectly references this as section (5) in its response. The correct section is (4).

The violations for THO002, THO021, and THO056 remain in the Report. Upon review of §38.2-2113 C and the Company's documents which included dates of mailing, the Bureau determined these violations were not related to proof of mailing the cancellation notice, but instead were violations for failing to provide proper notice to the lienholders. The lienholders are entitled to the same number of days advance notice as the insureds. In the three policies cited above, none of the lienholders were provided notice prior to the cancellation effective date.

Homeowner Nonpayment of Premium Cancellations

- (1) After further review, the violation for THO030 has been withdrawn from the Report. The Company has provided the cancellation notice.
- (3) The violations for THO041 and THO044 remain in the Report. The Company has failed to provide valid proof of mailing the notice to the lienholder.

The violation for THO044 remains in the Report. The Company utilized bulk mailing. Bulk mailing was not permitted in Virginia at the time of this cancellation and therefore the proof of mailing is not valid.

- (4) The Company incorrectly references this as section (5) in its response. The correct section is (4).

The violations for THO025, THO029, THO032, THO033, THO035, THO041 and THO044 remain in the Report. Upon review of §38.2-2113 C and the Company's documents which included dates of mailing, the Bureau determined these violations were not related to proof of mailing the cancellation notice, but instead were violations for failing to provide proper notice to the lienholder. The lienholders are entitled to the same number of days advanced notice as the insureds. In the three policies cited above, none of the lienholders were provided notice prior to the cancellation effective date.

Homeowner Non-Renewals

- (1) The violations for THO059, THO062, THO063, THO065, THO067, and THO068 remain in the Report. The Company has not provided any documentation showing that the lienholder was provided a non-renewal notice.

Private Passenger Automobile Claims

The Company has suggested in their response that several violations were apparently unknown to them until July 2017. During the introductory meeting between the Company and the Bureau, the Company was informed of the No Reply Report. The Company was encouraged to reconcile the report to the review sheets that the Company received. The No Reply Report was sent to the Company on June 3, 2016, June 23, 2016, and September 28, 2016 wherein these violations, originating throughout April 2016, were itemized. The Company did not advise the Bureau that the violations included in the reports were not received.

In other claims with multiple violations, the Company did not respond to the specific violation. It appears from the Company's August 23, 2017 response that their intent was to respond to one violation, at which time the Bureau would then apply that response to other plausibly unrelated violations on the same claim. It would have been improper for the Bureau to presume one response applied to multiple violations on the same claim.

Finally, there appears to be a disconnect between the date of restitution as stated by the Company on the spreadsheet and the actual date of the payment. In addition, there are discrepancies between the Company's stated amounts paid and the amount actually paid as evidenced by the check copy.

- (1) Section 14 VAC 5-400-30 of the Virginia Administrative Code requires all claim files to be documented with such specificity as to recreate the transactions of the claim. Each of the files listed below that show violations that are still active are missing documents that are referenced in the file but is not included in the file.

The violations for CPA005, CPA087, and CPA088 remain in the Report. The Company sent releases to these claimants. There is no documentation in the claim file explaining the reason for sending releases when there was no expectation of the execution and return of the releases. Absent an explanation for this course of action, the claim file cannot be reconstructed.

After further review, the violations for CPA014, CPA018, CPA041, CPA057, CPA068, CPA072, CPA093 CPA095 and CPA097 have been withdrawn.

The violation for CPA096 has been withdrawn from the Report. An additional violation has been added to the Report as a result of the underpayment to the claimant. Please refer to review sheet ClaimVehPPA1504623401 attached.

The violation for CPA028 remains in the Report. The portion of the violation relating to the vehicle damage has been removed.

(5a) The violations for CPA078, CPA082 and CPA091 remain in the Report. The Company should provide the Bureau with copies of the checks for these claims.

(5c) The violation for CPA016 has been withdrawn from the Report. The Company has provided the documentation related to the violation relative to the specific review sheet.

The violation for CPA053 has been withdrawn from the Report. The Company has provided the documentation related to the violation relative to the specific review sheet.

The violation for CPA091 remains in the Report. The title and tag fees have been removed from the violation. The underpayment for the difference between the tax owed and tax paid remains in the Report.

(5d) A violation for CPA014 has been added to the Report under review sheet ClaimVehPPA1287812433. The Company failed to pay a medical bill owed to the insured.

The violations for CPA041 and CPA086 remain in the Report. The Company has failed to satisfy the requirements of § 38.2-2201 of the Code of Virginia by paying the provider without having a valid Assignment of Benefits (AOB). Section 38.2-2201 requires medical expense benefits payments to be made directly to the injured party unless there is a valid AOB.

With regard to restitution, the medical expense benefits coverage is first-party, no fault coverage for which the insured has paid a specific premium under the auto insurance policy. Pursuant to the provisions of the applicable coverage form, PP05 96 01 16 – Medical Expense and Income Loss Benefits Coverage

- Virginia, the only limitation to the insured's ability to obtain benefits from another policy is as follows:

"No one will be entitled to receive payment in excess of actual medical and funeral expenses incurred from this or any other policy or combination of policies providing motor vehicle medical expense benefits applicable to the accident."

- (5e) The violation for CPA066 remains in the Report. The insured rented the vehicle on 2/4/2015. On 2/13/2017, the Company's file states that the insured asked if CDW was covered. The insured was not informed that CDW was not covered until 2/13/2015. The Company owes the insured CDW from 2/4/2015 through 2/13/2015; \$20.00 per day or \$200.00.

After further review, the violation for CPA080 has been withdrawn from the Report.

Based upon additional information provided by the Company the violations for CPA092 and CPA095 have been withdrawn from the Report.

- (5f) The violation for CPA026 remains in the Report. The CCC evaluation in the Company's file shows a value of \$22,525.00. There is no explanation in the file for the selection of the NADA value of \$21,250.00 versus the CCC evaluation of \$22,525.00. The Company owes the insured \$1008.76 which is the difference between the total payment of \$22,190.50 (taxes and tags included) and total owed of \$23,199.26 (taxes and tags included).
- (13b) The violation for CPA068 remains in the Report. The estimates written by American Mercury Insurance Company did not include the after-market parts notice. Please review estimates dated 1/13/2015, 1/21/2015, 2/26/2015 and 5/14/2015. The estimate the Company is referencing in their response originated from Southern Collision Center. This estimate included the notice the Company has referenced. No violation exists for the verbiage in this estimate.
- (14) The violation for CPA041 remains in the Report. There was no VALID Assignment of Benefits executed by the insured which granted the Company permission to pay the insured's benefits to anyone other than the insured. Again, the Bureau directs the Company to read § 38.2-2201 of the Code of Virginia. As a result of violating § 38.2-2201, the Company did not properly pay the claim. Failing to properly pay a claim is a violation of 14-VAC-5-400-70 D.
- (16c) After further review the violation for CPA083 has been withdrawn from the Report.

Homeowners Claims

- (1) The violation for CHO025 remains in the Report. The Company's file is not documented regarding proof of food loss equal to the amount paid.

After further review, the violation for CHO037 has been withdrawn from the Report.

CPA068 does not have a violation under 14 VAC 5-400-30. Review sheet ClaimPropHO-0679933861 has been addressed in (5a).

The violation for CHO073 remains in the Report. By the Company's own admission the file is not documented to include the conversation that the insured did not want to have the masonry work done in the winter.

- (2) The violation for CHO067, review sheet ClaimPropHO-383236466, has been addressed in (5d).

- (2a) The violation for CH067, ClaimPropHO-471188777, was withdrawn from the Report on April 18, 2017. The Company addressed this violation in (2) but the correct number is (2a).

After further review, the violation for CHO074 has been withdrawn from the Report.

After further review, the violation for CHO083 has been withdrawn from the Report.

- (2b) The violation for CH067, ClaimPropHO-1137279434, was withdrawn from the Report on April 18, 2017. The Company addressed this violation in (2) but the correct number is (2b).

- (4) After further review, the violation for CHO084 has been withdrawn from the Report.

- (5a) The violation for CHO012 remains in the Report. The Company has not provided proof of payment for the six percent (6%) interest owed to the insured.

The violation for CHO020 remains in the Report. The Company has not reimbursed the Insured the recoverable depreciation of \$687.46 plus the six percent (6%) interest owed to the insured. Additionally, the company should provide the letter sent to the Insured advising them of the additional payment for the cost of electricity consumed by drying equipment during the water mitigation portion of their loss.

After further review, the violation for CHO068 has been withdrawn from the Report. The Company addressed this violation in (2) but the correct number is (5a).

The violation for CHO049 remains in the Report. The Company should provide evidence of the conversation between the Company and insured. The Company did not address this violation within the response but made reference to it in the Restitution Spreadsheet.

The violation for CHO056 remains in the Report. The Company should provide evidence of the conversation between the Company and Insured. The Company did not address this violation within the response but made reference to it in the Restitution Spreadsheet.

The violation for CHO074 remains in the Report. The Company has not provided proof of payment for the six percent (6%) interest owed to the insured.

The violation for CHO081 remains in the Report. The Company should provide evidence of an independent investigation as opposed to relying on the insured to investigate his own loss.

(5b) The violation for CHO004 remains in the Report. The Company has not provided the terms of the \$5,000 limit of coverage for the Limited Fungi and Other Microbes or Rot. The Company should pay this loss without depreciation or deductible. The Company paid \$339.02 under the insured's personal property; the Company owes the insured an additional \$1,053.00 plus six percentage interest (6%).

(5c) After further review, the violation for CHO002 has been withdrawn from the Report.

The violation for CHO049 remains in the Report. This violation was not withdrawn as noted by the Company on the Restitution Spreadsheet. The Company has not provided proof of reimbursement of \$48.92 plus six percentage interests (6%).

The violation for CHO077 remains in the Report. The Restitution Spreadsheet has been amended to show the revised underpayment.

The violation for CHO012 remains in the Report. The Company should provide documentation of the conversation of August 4, 2017 between the insured and the Claim's Manager.

(5d) The violation for CHO67 remains in the Report. The Company misinformed the insured regarding the extent of coverage for remediation of mold. Mold, as a resulted of a covered loss, is not limited to \$5,000.00 limited fungi

coverage, but instead the Coverage A limit applies. The Company addressed this violation in (2) but the correct number is (5d).

- (6c) After further review, the following violations for CHO003, CHO004, CHO005, CHO013, CHO015, CHO016, CHO020, CHO023, CHO025, CHO026, CHO028, CHO037, CHO052, CHO065 and CHO068 have been withdrawn from the Report.

The violations for CHO074 and CHO083 were withdrawn on May 26, 2017 and were not included in the last version of the Report.

- (7) The violation for CHO022 remains in the Report. The Company provided a letter sent to the insured dated August 11, 2017 advising him that the Company "erroneously, may not have allowed for the repairs to the bathroom floor."

- (10b) The violation for CHO015 remains in the Report. The Company was able to anticipate replacement cost value based on the estimate entered on November 16, 2014 where the replacement cost value was \$5,810.15. Additionally, the Bureau asked the Company on April 6, 2016 the dollar threshold for placing lienholders and mortgages on checks. The Company did not reply.

The violation for CHO026 remains in the Report. The Company was able to anticipate replacement cost value based on the estimate entered on March 6, 2015 where the replacement cost value was \$6,081.79. Additionally, the Bureau asked the Company on April 6, 2016 the dollar threshold for placing lienholders and mortgages on checks. The Company did not reply.

The violation for CHO074 remains in the Report. The Bureau asked the Company on April 6, 2016 the dollar threshold for placing lienholders and mortgages on checks. The Company did not reply.

Forms

- (1) The violation for FPA023 remains in the Report. The Company stated that its rate classification statement was attached to its response to the Report. The examiners were unable to locate a rate classification statement in the documents provided by the Company.

Statutory Vehicle Notices

The violations for NSV006 and NSV021 have been withdrawn from the Report.

PART TWO – CORRECTIVE ACTION PLAN

Rating

- (1) The Companies were provided a Restitution Spreadsheet and instructed to complete and submit the spreadsheet with specific information such as the check amount, date of the check, amount of the check, etc. The Company has not provided this information. The Company should complete the Restitution Spreadsheet as instructed and return it the Bureau. Additionally, the Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.

The Companies did not indicate any specific corrective actions for the private passenger automobile line of business. The Companies should include what corrections have been or will be made for their private passenger automobile policies issued in Virginia in their next response.

Claims

The Company should make the outstanding restitution.

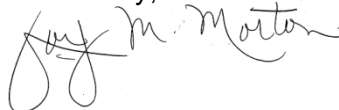
PART THREE – RECOMMENDATIONS

Claims- Terminations- Forms

- The Company has not addressed the Recommendations in its response.

We have made the changes noted above to the Market Conduct Examination Report. Enclosed with this letter is a revised version of the Report, technical reports and Restitution spreadsheet. The Company's response to this letter is due in the Bureau's office by November 20, 2017.

Sincerely,



Joy M. Morton
Manager
Market Conduct Section
Property and Casualty Division
(804) 371-9540
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Enclosures

COMPANY'S WRITTEN RESPONSE
TO
MARKET CONDUCT EXAMINATION REPORT
AS OF
August 31, 2015

American Mercury Insurance Company
and
Mercury Casualty Company

Date: January 8, 2018

685 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807
(908) 243-1800

The following are the Company's responses to the third draft Market Conduct Examination Report as of August 31, 2015, and to the accompanying letter from the Bureau of Insurance dated October 27, 2017. Throughout these responses the "Company" or "Mercury" means Mercury Casualty Company or American Mercury Insurance Company, as applicable. The "Bureau" or the "Department" refers to the Bureau of Insurance for the Commonwealth of Virginia.

For the most part the Company responds below only to those findings and observations that it disputes, however in some cases the Company has included comments while not disputing the examiners' findings.

PART ONE – EXAMINERS' OBSERVATIONS

Rating And Underwriting Review

Automobile New Business Policies

- (3a) RPA050: The Company does not dispute this finding. Our filing table was cut off and did not include the 3-year and 5-year discounts for tiers B1-E1. This was corrected in a subsequent filing prior to this examination and no corrective action is needed.
- (3b) RPA045: The Company recognizes that the agent failed to correctly record the 1/10/2013 as a conviction. The company acknowledges that it should have confirmed the conviction date prior to charging the violation.
- (3d) RPA009: The Company accepts the Bureau's finding that the Current Carrier Report showed continuous coverage without a lapse. The company respectfully disagrees with the Bureau's finding that the policy was tiered based on a lapse in coverage that occurred during the prior policy period. The Company can find no evidence that supports the Bureau's assertion that the company charged for a lapse in coverage that occurred during the prior policy period.
- RPA010: The Company acknowledges the examiner's findings.
- RPA021, RPA038, RPA057: The Company acknowledges the examiner's findings.
- RPA023, RPA024: The Company accepts the examiner's findings and acknowledges that the application did not properly record the prior insurance information.
- (3e) Regarding RPA006, RPA008, RPA023, RPA034 and RPA044: The Company respectfully disagrees with the examiners' assertion that the application automatically defaulted to New regardless of the purchase date indicated. The purchase date field and new/used field operated independently of one another. The Company maintains that it received conflicting information from the Insured and interpreted the ambiguous

information in the favor of the Insured. Prior to this examination and during the examination period the Company deployed a new policy writing system which will prevent this from occurring in the future.

- (4) RPA006 RPA013 RPA024 RPA026 RPA029 RPA032 RPA036 RPA037 RPA039
RPA040 RPA041 RPA050 RPA057 RPA059 RPA060 RPA068

The Company withdraws its objection to the examiner's findings and maintains that no driver was ever declined coverage as a result of the language in question. As the Bureau has acknowledged the language in question was removed during the examination period and is no longer used by the Company.

Automobile Renewal Business Policies

- (1) The Company maintains that the presence of the PP 05 96 01/2005 on a policy that did not include coverage for Medical Expense and Income Loss Benefits in no way altered the coverage provided to the insured or the reasonable interpretation thereof. Nonetheless, the Company will no longer dispute this issue. Prior to this examination and during the examination period the Company deployed a new policy writing system which corrected this issue.
- (3b) RPA140: With respect to this policy, the Company respectfully disagrees. The Bureau indicated that the policy file did not indicate that driver 2, assigned to vehicle 2, had any surchargeable convictions or at-fault accidents. The policy file in fact contains information showing the driver 2 was convicted of Speeding 15-19 MPH on 9-26-2012 and Speeding 15-19 MPH on 4-25-2012. Included is a legible copy of the Company's record of the MVR report received on 2/4/2014. This exhibit is labeled "Auto Renewal Business (3b) RPA 140."
- (4) RPA136 RPA141

For the files referenced above, the Company withdraws its objection to the examiner's findings and maintains that no driver was ever declined coverage as a result of the language in question. As the Bureau has acknowledged the language in question was removed during the examination period and is no longer used by the Company.

Homeowners New Business Policies

- (2) The company maintains its position that the 'Primetime Discount' on the declaration page did include a lower rating factor for an insured that is age 55+. The Company withdraws its objection and acknowledges the Bureau's finding. Based on the Bureau's objection, the Company removed the phrase 'Primetime Discount' with a subsequent filing.

- (3b)** Regarding RHO036, the Company respectfully disagrees. In the attached CLUE report, the loss for 10/23/2011 was reported by the prior carrier, Travelers, with a cause of loss as Vandalism/Malicious Mischief. The description of the loss was entered by the agent, and is not derived from the CLUE report itself. The Company respectfully requests that this violation be removed.
- (3c)** Please see the attached declarations page for RHO037. The effective dates of the primary residence policy are 11/1/14-11/1/15, which encompasses the 5/28/15 effective date of the secondary residence. The Company respectfully requests that this violation be removed.

Regarding RHO050, the Company respectfully disagrees. The attached tax record represents the year built as 1990, and that is the year that was used for rating of the policy. The year of 1994 referenced by the examiner that is found on the CoreLogic report is the 'effective year built', not the actual year the home was built. The Company respectfully requests that this violation be removed.

- (3d)** Please see attached CoreLogic report, MSB, and policy notes for RHO041. The inspection was received late, but the construction type was updated to 90% hardboard siding after review of the inspection in January of 2017. This change will be implemented at the first opportunity, which is the upcoming June 2018 renewal.
- (3e)** The Company acknowledges these violations.

Homeowners Renewal Business Policies

- (2)** The company maintains its position that the 'Primetime Discount' on the declaration page did include a lower rating factor for an insured that is age 55+. The Company withdraws its objection and acknowledges the Bureau's finding. Based on the Bureau's objection, the Company removed the phrase 'Primetime Discount' with a subsequent filing.
- (3a)** The Company is including the spreadsheet again showing the rating for RHO083, which matches the rate shown on the declarations page. The Company respectfully requests that this violation be removed.
- (3c)** The Company acknowledges the incorrect factor of 0.984 instead of 1.0 was used for 'Coverage A limit and the Presence of Mortgage.'
- (3d)** The \$30 Expense Constant table was inadvertently included in the rate pages, but it was not intended to be charged. The approved Rate Order Calculations/Rating Sequences provided for RHO053 and RHO054 accurately reflect the \$77 policy fee. The Company removed the Expense Constant table from a subsequent filing.

Regarding RHO068, the \$30 Expense Constant table was inadvertently included in the rate pages, but it was not intended to be charged. The approved Rate Order Calculations/Rating Sequences provided for RHO068 accurately reflect the \$77 policy fee. The Company removed the Expense Constant table from a subsequent filing.

- (3f)** The Company acknowledges these violations.

TERMINATION REVIEW

Company-Initiated Cancellations – Automobile Policies

NOTICED MAILED PRIOR TO THE 60TH DAY OF COVERAGE

- (1) TPA020: The Company maintains that the named insured never requested that the Company file proof of financial responsibility. The note regarding the FR filing automatically appeared in the Company’s policy system because of information on the MVR. Section 38.2-228 does not impose a duty upon an insurer to verify the accuracy of information on an MVR if it is not being used for underwriting purposes; the law requires only that insurers provide proof of financial responsibility “at the request of a named insured.”

Section 38.2-228 reads:

§ 38.2-228. Proof of future financial responsibility.

At the request of a named insured, a licensed property and casualty insurer shall provide without unreasonable delay to the Commissioner of the Department of Motor Vehicles proof of future financial responsibility as required by the provisions of Title 46.2.

Again, as the named insured did not request that the company provide proof of financial responsibility, the company had no basis to surcharge the insured for a financial responsibility filing and to make such a filing with the Commissioner of the Department of Motor Vehicles.

- (4) TPA008 TPA014: While the Company has withdrawn its objection to this finding generally, the company respectfully requests that this finding be removed from the “Terminations – Automobile Cancellation Notices Mailed Prior to the 60th Day” section of the examination as it has no relevance to an Automobile Cancellation Notice.

All Other Cancellations – Automobile Policies

NONPAYMENT OF THE PREMIUM

- (2b) TPA049: The Company maintains that its practice at the time of this examination, and at the present time is that termination notices are not sent to third party interests, when required, until after the policy actually terminates.

Regarding the cancellation with a system transaction date of January 26, 2015, mailed January 27, 2015, and effective February 12, 2015, the cancellation was reinstated on February 12, 2015, without lapse in coverage. No notice was sent to the Additional Interest as the policy did not actually terminate. Had the policy not been reinstated without lapse, the Company would have sent notice to the Additional Interest on or about February 22nd and effective on or about March 3rd. This provides coverage to the

Additional Interest in compliance with VA statutes while minimizing the number of times a notice of cancellation and notice of reinstatement need to be sent in cases where the a non-payment cancellation is subsequently reinstated without lapse.

REQUESTED BY THE INSURED

- (2) TPA068: The Company withdraws its objection to the Bureau's finding and maintains that the Company sent the refund to the Named Insured's agent who was acting within the scope of their authority as agent for the insured.

Company-Initiated Non-renewals – Automobile Policies

- (1) TPA073, TPA075: While the Company has withdrawn its objection to this finding generally, the company respectfully requests that this finding be removed from the "Company-Initiated Non-renewals – Automobile Policies" section of the examination as it has no relevance to the non-renewal of automobile policies.
- (2) TPA075: The Company acknowledges this finding.

Company-Initiated Cancellations – Homeowners Policies

NOTICE MAILED PRIOR TO THE 90TH DAY OF COVERAGE

- (1) THO022: Please see the attached billing screen which shows the insured made payments of \$338.50 via credit card on 8/4/14, \$52.25 via credit card on 7/17/14 and \$281.25 via e-check on 5/29/14, totaling \$672. A refund in the amount of \$227 was issued back to the insured's credit card on 10/9/14. The Company respectfully requests that this violation be removed.
- (2) Please see attached certificate of mailing for THO003 which shows the notice was mailed on 8/7/14. The Company respectfully requests that this violation be removed.

NOTICE MAILED AFTER THE 89TH DAY OF COVERAGE

- (1) Please see the attached certificates of mailing for THO019 and THO056 which clearly show the notices were mailed on 10/14/14 and 11/18/14, respectively. The Company respectfully requests that these violations be removed.
- (2c) Please see attached proof of mailing for the lienholder notice for THO021.
- (4) THO002, THO021, and THO056: the Company acknowledges this finding.

CLAIMS REVIEW

Private Passenger Automobile Claims

(1) 14 VAC 5-400-30

CPA096: Please see our response on the new Review Sheet. We have now mailed a check to the Claimant for the CDW which includes 6% interest for a total of \$143.00. We included a copy of this check with the Review Sheet.

CPA028: Please see our response on the Review Sheet that the Department provided. We are in agreement.

(5a) 14 VAC 5-400-70 D

CPA078, CPA082 and CPA091: A Review Sheet was not provided. Enclosed are the copies of the checks requested.

(5c) 14 VAC 5-400-70 D

CPA091: We agree with this violation and have mailed a check to the Insured in the amount of \$3.18 which includes the 6% interest. A copy of the check is enclosed

(5d) 14 VAC 5-400-70 D

CPA014: A Review Sheet was not provided. We had previously provided a copy of the medical bill and we are providing it again.

CPA041: We respectfully disagree with the Department's comments as it relates to CPA041. While we do agree that the AOB does not comply with the statutory requirements, we do not think it's reasonable for the Company to pay twice. It is undisputed that policy benefits were properly paid. We admit that this AOB was technically defective and promise to observe these requirements in the future.

(5e) 14 VAC 5-400-70 D

CPA066: In our previous response to the Department on this violation we advised the Department that a letter was sent to the Insured on December 22, 2014. This letter clearly outlines that the insured's Rental Car Benefit does not include mileage, gas charges, or additional insurance. The insured was properly advised regarding the CDW, and therefore the Company respectfully requests that this violation be withdrawn. We are providing a copy of this letter again as proof.

(5f) 14 VAC 5-400-70 D

CPA026: We agree with the Department and have paid the insured \$1069.29. We have provided a copy of this check in our response.

(14) 38.2-2204

CPA041: Please see our response to violation CPA041 found under section 5d.

Homeowners Claims

- (1) The \$150 claimed by the insured and paid by Mercury for the value of food lost due to loss of refrigeration was based upon an estimate provided by the insured. It was considered to be a reasonable amount and Mercury did not request documentation, only the insured's good faith estimate. It is Mercury's position that it would be unreasonable to require receipts for spoiled food. The amount was documented in the below log note.

04/10/2015 6:22 AM
ALE Payment
04/10/2015
9:22am

received ale worksheet from insured. insured sent in receipt[for food however they did not exceed \$100 a week which is the amount insured advised it cost to feed her family weekly.

insured was out of the home for 1/13 to 1/24- approx. two weeks. insured paid her sister %150 a week for her and her son to stay there.

total ale payment is \$300.

insured also loss \$150 of food when loss occurred. issuing payment for loss of food under contents'

outbound call to named insured. explained ale payment. advised receipts do not exceed normal cost of living which was provided by insured. insured advised she understands

- (5a) CHO012: Attached is proof of issuance of 6% interest (\$33.67) on payment of \$561.16. Check was negotiated on 05/03/2017

CHO020: Mercury attempted to reimburse the insured, however their correspondence was returned as not deliverable and could not be forwarded. (See below) Because mail was returned a letter was not sent to explain entitlement to reimbursement for additional electrical expense. Instead we called the insured's phone number of record and left a detailed message with regard to how to make claim for the additional electrical expense. No response was ever received. (See attached)

CHO049: Log note documenting conversation appears below:

08/09/2017

11:20 AM

Call to insd

Discussed with insd that error was made in handling of loss in 2015. Advised there would be coverage if he still wishes to pursue. Advised he does not want to pursue and incurred no expenses that he wants to be reimbursed for.

CHO056: See attached documentation.

CHO074: Documentation of Mercury's payment of \$190.87 reflecting 6% interest on its prior payment of \$3,181.22 is attached. The check cleared on 03/27/2017.

CHO081: The Bureau is incorrect, and Mercury requests withdrawal of this violation. The Bureau cited this violation under 14VAC5-400-70-D "*In any case where there is no*

dispute as to coverage or liability, every insurer must offer to a first party claimant, or to a first party claimant's authorized representative, an amount which is fair and reasonable as shown by the investigation of the claim, provided the amount so offered is within policy limits and in accordance with policy provisions."

Mercury contends this citation is inapposite as there *was* a dispute as to liability under the policy. Mercury contends that when a loss as reported and described by an insured is not covered under the policy, physical inspection and independent investigation is redundant and not required and that it is entitled to depend upon the insured's description of the loss. This was not a covered loss and was accurately described by the insured as shown in the attachment.

- (5b) CHO004: Mercury concedes this violation. Mercury previously tried to refund the insured's deductible, however our letter and check were returned as undeliverable with no forwarding information (documentation attached). Mercury will await the Bureau's further instructions.
- (5c) CHO049: No payment of \$48.92 plus interest was ever issued. The insured was contacted on 08/09/2017 and was advised there was coverage available for this loss, however he responded that he did not want to pursue and had incurred no expenses he wished to be reimbursed for. (See Log note, below)

08/09/2017

11:20 AM

Call to insd

Discussed with insd that error was made in handling of loss in 2015. Advised there would be coverage if he still wishes to pursue. Advised he does not want to pursue and incurred no expenses that he wants to be reimbursed for.

The violation for CHO077 remains in the Report. The Restitution Spreadsheet has been amended to show the revised underpayment. Mercury previously paid \$304.55 on 3/17/2017 reflecting the underpayment of \$287.32 plus 6% interest. The check was negotiated by the insured on 03/28/2017. See Attachment

CHO012: Mercury requests that this violation be removed. Please see the requested information attached.

- (5d) CHO67: Mercury concedes that the insured was initially misinformed that the \$5,000 limit of liability for the Limited Fungi coverage would apply to mold remediation for her loss. Mercury contends this error was rendered moot and harmless as no invoice for mold remediation was ever submitted by the insured.
- (7) CHO022: See attached updated log entry and check confirmation indicating this matter has been resolved.

(10b) CHO015: Mercury concedes this violation. Inaccurate language was used when explaining to insureds the time frame for making claim for replacement cost benefits. At the time of this loss the dollar threshold for placing lienholders on checks was \$5,000 if no work had been done and the lien was still impaired.

CHO026: Mercury concedes this violation. Inaccurate language was used when explaining to insureds the time frame for making claim for replacement cost benefits. At the time of this loss the dollar threshold for placing lienholders on checks was \$5,000 if no work had been done and the lien was still impaired.

CHO074: At the time of this loss the dollar threshold for placing lienholders on checks was \$5,000 if no work had been done and the lien was still impaired.

REVIEW OF FORMS

Automobile Policy Forms

POLICY FORMS USED DURING THE EXAMINATION PERIOD

- (1) FPA023: The Company filed and made available a rate classification statement in compliance with § 38.2-2214. Please see the attached rate classification statement exhibit labeled Forms (1) FPA023.

PART TWO – CORRECTIVE ACTION PLAN

The Company has implemented, or will be implementing as soon as administratively possible, the corrective actions reflected in the responses above.

Rating Review

- (1) Please see the attached restitution spreadsheet.

Termination Review

- (1) Please see the attached restitution spreadsheet.

Claims Review

- (1) Please see the attached restitution spreadsheet.
(10) The requested information has been provided to the Market Conduct Section.

PART THREE – RECOMMENDATIONS

Thank you for the recommendations. We have reviewed them and have implemented changes to address them, either by changes to processes or training. See separate document outlining our Corrective Action Plans.

**CORRECTIVE ACTION PLAN - Rating & Underwriting
Virginia Market Conduct Examination**

Project Plan Status	Date Plan Updated
Plan Initiated	12/29/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Correct the errors that caused the underpayments and overpayments, and send the amount of the overpayment to insureds.	HO: Amanda Cheney PPA: Kevin Bailey	1	3/28/2017	Completed	All refunds have been issued with interest.
Include six percent (6%) simple interest in the amount paid to the insureds and claimants.	HO: Amanda Cheney PPA: Kevin Bailey	2	3/28/2017	Completed.	see above.
Complete and submit to the Bureau the enclosed file titled "Rating Overcharges Cited During the Examination". By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.	HO: Amanda Cheney PPA: Kevin Bailey	3	Sent with our Examination Response	Completed	HO: The refunds have been completed. A check has been sent for these items along with the 6% interest. All other alleged overcharges cited by the Department were respectfully challenged. PPA: The refunds have been completed. A check has will be sent for these items along with the 6% interest.
Properly represent the benefits, coverages, advantages, and conditions of the policy by listing forms and discounts applicable to the policy on the declarations page.	HO: Amanda Cheney PPA: Kevin Bailey	4	3/28/2017	Completed	HO: All corrections to the system have been implemented. PPA: All filings have been updated and all system fixes were implemented when the company deployed its new policy writing system in Virginia, July of 2015.
Provide the Insured with a written notice of an Adverse Underwriting Decision.	HO: Amanda Cheney PPA: Kevin Bailey	5	3/28/2017	Completed	The company implemented a new policy writing system in July 2015 and sends Adverse Underwriting Decision Notices in accordance with Virginia law.
File with the commission all rates and supplementary rate information, including fees	HO: Amanda Cheney PPA: Kevin Bailey	6	3/28/2017	Complete	HO: Need filing numbers from Robert Hernandez of Ann Yan PPA: All filings have been updated and are in compliance.
Use the rules rates on file with the Bureau. Particular attention should be given to the use of filed discounts, surcharges, points for accidents and convictions, symbols, territories, tier eligibility, increased limits factor, base and/or final rates, filed fees, construction type and public protection class.	HO: Amanda Cheney PPA: Kevin Bailey	7	3/28/2017	Complete	HO: Noted for Joe: We are still disputing these allegations. PPA: Rates and rules on file with the bureau are being used, including use of filed discounts, surcharges, points for accidents and convictions, symbols, tier eligibility, increased limit factors, base rates and/or final rates and filed fees.
Update the Insureds credit information at least once in a three year period.	HO: Amanda Cheney PPA: Kevin Bailey	8	3/28/2017	Completed	PPA: The company implemented a new policy writing system in July 2015, Insured's credit information will be re-run at least once in a three year period.

**CORRECTIVE ACTION PLAN -
Terminations
Virginia Market Conduct Examination**

Project Plan Status	Date Plan Updated
Plan Initiated	12/29/2017

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Correct the errors that caused the underpayments and overpayments, and send the amount of the overpayment to insureds.	Kevin Bailey	1	3/30/2017	Complete	PPA: All errors that caused over and under payments have been corrected.
Include six percent (6%) simple interest in the amount paid to the insureds and claimants.	Kevin Bailey	2	3/30/2017	Complete	PPA: Six percent simple interest will be included on all refunds.
Complete and submit to the Bureau the enclosed file titled "Termination Overcharges Cited During the Examination". By returning the completed file to the Bureau, the companies acknowledge that they have refunded or credited the overcharges listed in the file.	Kevin Bailey	3	3/30/2017	In Progress	PPA: TPA039 The amount the department indicates was overcharged was never actually paid by the insured. TPA025 is disputed. TPA043 TPA050 are being refunded with interest.
Timely file proof of financial responsibility with the Department of Motor Vehicles.	Kevin Bailey	4	3/30/2017	Complete	PPA: The Company disputes that proof of financial responsibility was not provided in a timely manner. The company provides proof of financial responsibility in accordance with Virginia law.
Written Notice of an AUD	Kevin Bailey	6	7/19/2015	Complete	PPA: The company implemented a new policywriting system in July 2015 and sends Adverse Underwriting Decision Notices in accordance with Virginia law.
Calculate Return premium according to the filed rules and provisions.	HO: Jeremy Baczkiewicz PPA:Kevin Bailey	7	3/28/2017	Complete	HO: All known defects have been submitted for repair. PPA: The company implemented a new policywriting system in July 2015 and calculates return premium in accordance with filed rules and provisions.
Provide coverage to the Named Insured and any other person using or responsible for the use of the motor vehicle as required by statute.	Kevin Bailey	8	7/19/2015	Complete	PPA: While the company maintains that all forms in question utilized during the examination period provided coverage for the Named Insured and any person using or responsible for the use of the motor vehicle as required by statute, the forms in question have were replaced in July 2015 with forms that no longer contain the language to which the department objects.
Obtain and retain valid proof of mailing the cancellation notice to the Insured and lienholder.	HO: Jeremy Baczkiewicz PPA:Kevin Bailey	9	3/28/2017	Complete	This was disputed as to the lienholder notices not being in compliance as well as some of the proof of mailing not being able to be read.
Cancel a policy insuring an owner-occupied dwelling when the notice is mailed after the 89th day of coverage only for those reasons permitted by statute.	Jeremy Baczkiewicz	10	1/1/2015	Complete	The offending employee no longer works for the company.
Send the cancellation notice for an owner occupied dwelling at least 30 days before the effective date of cancellation when it is mailed after the 89th day.	Amanda Cheney	11	3/30/2017	Complete	The Company will ensure that notices of cancellation are sent with at least the amount of notice required by VA Statute.
Cancel a motor vehicle policy on for the reasons permitted by statute	Kevin Bailey	12	3/30/2017	Complete	The company only cancels policies for reasons permitted by statute. The company's new policy writing system, deployed in July 2015 provides a list of approved reasons for which a policy may be cancelled.
Send the cancellation notice at least 45 days before the effective date of cancellation when the notice on a private passenger automobile policy is mailed after the 59th day of coverage	Kevin Bailey	13	7/19/2015	Complete	The company implemented a new policywriting system in July 2015 sends the cancellation notice at least 45 days before the effective date of cancellation when the notice on a private passenger automobile policy is mailed after the 59th day of coverage
Provide proper notice of cancellation or refusal to renew to the Insured and lienholder.	HO: Jeremy Baczkiewicz PPA:Kevin Bailey	14	3/28/2017	Complete	We provide proper notice to the Insured and lienholder
Send cancellation notices at least 15 days before the effective date of cancellation when a private passenger automobile policy is cancelled for nonpayment of premium	Kevin Bailey	15	7/19/2015	Complete	The company implemented a new policywriting system in July 2015 and sends cancellation notices at least 15 days before the effective date of cancellation when a private passenger automobile policy is cancelled for nonpayment of premium

Key Activity	Approver(s)/ Owner	Action Item #	Date Initiated	Status	Comment
Send the notice of cancellation to the address listed on the policy	Amanda Cheney	16			The company will ensure that notices of cancellation are sent to the address listed on the policy.
Obtain advance written notice when the insured requests cancellation of the policy.	Kevin Bailey	17	3/30/2017	Complete	The company will obtain insured's request to cancel the policy in compliance with applicable Virginia law and the policy issued by the Company.

SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219
TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

February 5, 2018

VIA UPS 2nd DAY DELIVERY

Laura A. Wade
Division Manager-Claims
Mercury Insurance
686 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807

Re: Market Conduct Examination
Mercury Casualty Company (NAIC# 11908)
American Mercury Insurance Company (NAIC# 16810)
Examination Period: September 1, 2014 – August 31, 2015

Dear Ms. Wade,

The Bureau of Insurance (Bureau) has reviewed the January 8, 2018 response to the Preliminary Market Conduct Report (Report) of Mercury Casualty Company and American Mercury Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

Part One – Examiners' Observations

Automobile New Business Rating

- (3d) The violation for RPA009 remains in the Report. The Company's response acknowledges that the Current Carrier Report showed the insured had prior continuous coverage without a lapse. However, the Company rated the policy in Tier D1 and the application showed "BI Lapse Period 3", which only corresponds to an insured with a lapse in prior coverage. For reconsideration, the Company should explain why it rated the policy in Tier D1 with no lapse in prior coverage.

- (3e) The violations for RPA006, RPA008, RPA023, RPA034 and RPA044 remain in the Report. The Bureau is unable to reconcile that the vehicles were correctly rated as newly purchased when the purchase dates on the applications are in conflict with this description.

Automobile Renewal Business Rating

- (3b) After further review, the violation for RPA140 has been withdrawn from the Report. The Company provided a copy of the driver's MVR which supported the surcharge of three points for two convictions during the experience period.

Homeowners New Business Rating

- (3b) The violation for RHO036 remains in the Report. The Company referenced a loss date of October 23, 2011 in their Response. However, the loss was October 13, 2012. Based on the CLUE report provided by the Company, the loss was classified as a Theft/Burglary; therefore, the policy should have been rated using the same classification.
- (3c) After further review, the violation for RHO037 has been withdrawn from the Report.
- After further review, the violation for RHO050 has been withdrawn from the Report.
- (3d) The violation for RHO041 remains in the Report. The Bureau acknowledges that the Company will be correcting the error.

Homeowners Renewal Business Rating

- (3a) The violation for RHO083 remains in the Report. The Company failed to surcharge the policy for the water claim that occurred on September 8, 2014. The claim file confirms that the claim payment was issued to the insured prior to the renewal process date of October 8, 2014. Additionally, the Company incorrectly applied a Loss Free Discount when rating the policy. The spreadsheet provided by the Company verifies that a surcharge was not applied and a discount was erroneously applied.
- (3d) The violations for RHO053, RHO54, and RHO068 remain in the Report. The Bureau acknowledges that the Company has corrected the error.

Terminations

Automobile Cancellation Notices Mailed Prior to the 60th Day

- (1) After further review the violation for TPA020 has been withdrawn from the Report.
- (4) The violations for TPA008 and TPA014 remain in the Report. The cancellations are related to applicable policy effective dates. The contract effective date is included on the declarations page. As such, the cancellation modifies the effective date on the declaration page. Each of these policies had declarations pages that referenced driver exclusions.

Automobile Nonpayment of Premium Cancellations

- (2b) The violation for TPA049 remains in the Report. For reconsideration, the Company should provide evidence of a communication to the Bureau, prior to the onset of the examination, regarding the Company's lienholder notification practice.

Automobile Insured Requested Cancellations

- (2) The Company should make restitution to the insured on TPA068.

Automobile Non-Renewals

- (1) The violations for TPA073 and TPA075 remain in the Report. The cancellations are related to applicable policy effective dates. The contract effective date is shown on the declarations page. As such, the non-renewal is applicable to the effective date on the declarations page. Each of these policies had declarations pages that referenced driver exclusions.

Homeowner Cancellation Notices Mailed Prior to the 90th Day

- (1) After further review, the violation for THO022 has been withdrawn from the Report. The Company provided the billing screens showing the total payment amount of \$672.00.
- (2) The violation for THO003 remains in the Report. The Company provided a copy of the proof of mailing; however, the USPS ball stamp is not legible. For reconsideration, the Company should provide a legible copy.

Homeowner Cancellation Notices Mailed After the 89th Day

- (1) After further review, the violation for THO019 has been withdrawn from the Report. The Company provided a legible proof of mailing.
- The violation for THO056 remains in the Report. The USPS stamp is not legible. The examiners are unable to verify the date the notice was mailed to the insured. For reconsideration, the Company should provide a legible copy of the USPS stamp.
- (2c) The violation for THO021 remains in the Report. The Company has not provided the mailing list from USPS. The documentation provided in the Company's response to the Report states that the cancellation was mailed. Therefore, the Company should have a mailing list from USPS showing the lienholder's name and address.

Private Passenger Automobile Claims

- (5d) The violations for CPA041 and CPA086 remain in the Report. Absent a valid Assignment of Benefits, no assignment exists and therefore the Company should pay the insured the benefits that were not properly assigned. By comparison, if the Company failed to obtain a valid release on a claim, no release would exist and the claim would be subject to future monetary payment.

- (5e) After further review, the violation for CPA066 has been withdrawn from the Report.

The Company has not made restitution on CPA072. The Company should reimburse the CDW expense incurred by the insured.

The violation for CPA080 was previously adjusted to \$49.99. The Company paid the insured \$49.99 but did not include the six percent (6%) simple interest. The Company should issue payment to the insured for the interest.

The violation for CPA095 was not withdrawn from the Report. The Company is referencing withdrawn review sheet ClaimVehPPA-2043163857 in its note on the Restitution Spreadsheet. The violation on CPA095 resulted from an underpayment for sales tax (\$3.36) and an underpayment for CDW (\$14.99). The Company should make restitution to the insured in the amount of \$18.35 plus six percent (6%) simple interest.

- (14) The violation for CPA041 remains in the Report. The Company has not provided any additional documentation that would cause the Bureau to reconsider its initial findings.

Homeowners Claims

- (1) After further review, the violation for CHO025 has been withdrawn from the Report.

- (4a) The violation for CHO012 remains in the Report. The Company has provided evidence to support the six percent (6 %) simple interest on \$561.16.

The violation for CHO020 remains in the Report. The Company should send the restitution amount of \$687.46 plus six percent (6%) simple interest to Virginia State Treasury for unclaimed property.

The violation for CHO022 has been withdrawn from the Report. The Company incorrectly referenced this item as (7) in its response.

The violation for CHO049 remains in the Report. Please provide a screen shot of the conversation between the Company and the insured. The re-created version is not acceptable.

The violation for CHO056 remains in the Report. The Company has not provided evidence that it reached out to the insured concerning the electric bill. The letter in the Company's response addresses the tree stump removal, not the electric bill.

After further review, the violation for CHO081 has been withdrawn from the Report.

- (4b) The violation for CHO004 remains in the Report. Since the letter and check were returned as undeliverable, the Company should send the restitution amount of \$1,053.00 plus six percent (6%) simple interest to Virginia State Treasury for unclaimed property.

- (4c) After further review, the violation for CHO002 has been withdrawn from the Report.

The violation for CHO047 remains in the Report. This violation was not withdrawn as noted by the Company on the Restitution Spreadsheet. The Company has not provided proof of restitution for \$48.92 plus six percent (6%) simple interest.

The violation for CHO049 was withdrawn April 12, 2017. The examiner referenced the incorrect BOI reference number when responding to the Company's response. The reference to CHO049 should have read CHO047.

After further review, the violation for CHO012 has been withdrawn from the Report.

- (5a) The violation for CHO67 remains in the Report. The Company does not dispute that the insured was misinformed regarding mold remediation which is the basis for this violation.

Review of Forms

- (1) The violation for FPA023 has been withdrawn from the Report. The Company has provided the rate classification statement applicable to the examination period.

Part Two – Corrective Action Plan

General

The Company should provide copies of the 2015 application and 2015 declarations page wherein the driver exclusion revisions were made.

Rating

- (3) The Company failed to provide the check number for the restitution made on RHO016 and RHO30.

The Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.

Terminations

- (1) The Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.

Claims

- (1) The Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.

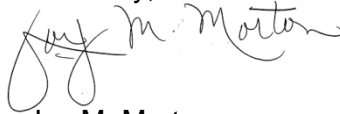
Notices

- (1) Please provide an estimated date for the revision and implementation of the "Notice of Information Collection and Disclosure".

- (2) Please provide an estimated date for the revision and implementation of the "Important Information Regarding Your Insurance" notice.

We have made the changes noted above to the Market Conduct Examination Report. Enclosed with this letter is a revised version of the Report, technical reports and Restitution Spreadsheet. The Company's response to this letter is due in the Bureau's office by February 21, 2018.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is fluid and cursive, with the first name "Joy" being particularly prominent.

Joy M. Morton
Manager
Market Conduct Section
Property and Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov

Enclosures

COMPANY'S WRITTEN RESPONSE
TO
MARKET CONDUCT EXAMINATION REPORT
AS OF
August 31, 2015

American Mercury Insurance Company
and
Mercury Casualty Company

Date: March 15, 2018

685 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807
(908) 243-1800

The following are the Company's responses to the most recent draft Market Conduct Examination Report as of August 31, 2015, as modified by the letter from the Bureau of Insurance dated February 5, 2018. Throughout these responses the "Company" or "Mercury" means Mercury Casualty Company or American Mercury Insurance Company, as applicable. The "Bureau" or the "Department" refers to the Bureau of Insurance for the Commonwealth of Virginia.

For the most part the Company responds below only to those findings and observations that it disputes, however in some cases the Company has included comments while not disputing the examiners' findings.

PART ONE – EXAMINERS' OBSERVATIONS

Automobile New Business Rating

- (3d) RPA009: The Company acknowledges the Bureau's finding that the Policy was rated with a lapse, that the lapse was not shown in the application in a way that would be apparent to the Named Insured. The Company maintains that the policy was rated in tier D1 based on the information entered by the agent into Mercury's point of sale system.
- (3e) RPA006, RPA008, RPA023, RPA034, RPA044: The Company maintains that the vehicles were rated based on input from the Insured, via the agent at the point of sale. The Company acknowledges the presence of conflicting information. The Company respectfully requests that the Bureau reconcile the conflicting information in favor of the Insured, which would grant them the lower rate for a newly purchased vehicle. This is the approach taken by the Company with respect to these files. The Company's system has been updated and no longer allows this discrepancy.

Homeowners New Business Rating

- (3b) Regarding RHO036, the Company respectfully disagrees. The attached screen shots show the loss from October 13, 2012 is classified correctly. It is classified as 'other' for claim type and claim cause is 'theft.' Please remove this violation.

Homeowners Renewal Business Rating

- (3a) The Company acknowledges this finding.

TERMINATIONS

Automobile Cancellation Notices Mailed Prior to the 60th Day

- (4) TPA008 TPA014: While the Company has withdrawn its objection to this finding generally, the Company respectfully requests that this finding be removed from the

“Terminations – Automobile Cancellation Notices Mailed Prior to the 60th Day” section of the examination as it has no relevance to an Automobile Cancellation Notice. The Bureau has asserted that since the contract effective date is included on the declarations page and since the cancellation modifies the effective date on the declarations page that the declarations page should be included in the cancellation evaluation. The Company respectfully disagrees with this assertion. No declarations were created or mailed as a part of the cancellation transaction. Had the cancellation been reinstated, no declarations would be created or mailed, instead a reinstatement notice would be sent. Given that an updated declarations page was not a part of this transaction the Company respectfully requests that this violation be withdrawn.

Automobile Nonpayment of Premium Cancellations

- (2b) TPA049: The Company maintains that its practice at the time of this examination, and now, is that termination notices are not sent to third party interests, when required, until after the policy terminates. The Company acknowledges the Bureau’s request for a communication prior to the onset of the examination and responds that while this practice was in place prior to the onset of the examination a specific communication could not be located.

Automobile Insured Requested Cancellations

- (2) TPA068: The Company withdraws its objection to the Bureau’s finding and maintains that the Company sent the refund to the Named Insured’s agent who was acting within the scope of their authority as agent for the Insured. At the Bureau’s direction the Company has issued another refund check to the customer involved. Documentation is included in the attached restitution worksheet.

Automobile Non-Renewals

- (1) TPA073, TPA075: While the Company has withdrawn its objection to this finding generally, the company respectfully requests that this finding be removed from the “Automobile Non-Renewals” section of the examination as it has no relevance to an Automobile Non-Renewal Notice. The Bureau has asserted that since the contract effective date is included on the declarations page and since the non-renewal modifies the effective date on the declarations page that the declarations page should be included in the non-renewal evaluation. The Company respectfully disagrees with this assertion. No declarations were created or mailed as a part of the non-renewal transaction. Had the policy been renewed a declarations would be created or mailed. Given that an updated declarations page was not a part of this transaction the Company respectfully requests that this violation be withdrawn.

Homeowner Cancellation Notices Mailed Prior to the 90th Day

- (2) The Company is again attaching the certificate of mailing for THO003 which clearly shows the notice was mailed on 8/7/14. Please remove the violation

Homeowner Cancellation Notices Mailed After the 89th Day

- (1)** The Company is again attaching the certificate of mailing for THO056 which clearly shows the notice was mailed on 11/8/14. Please remove the finding
- (2c)** The Company acknowledges this finding.

Private Passenger Automobile Claims

(5d) 14 VAC 5-400-70 D

CPA 041: While we do agree that the AOB received on this referenced claim did not comply with the statutory requirements, we do not think it's reasonable for the Company to pay twice. Notwithstanding our disagreement with the Bureau's position, the Company has made restitution payments to the Insureds on March 6, 2018. We are providing a copy of these checks. We admit that this AOB was technically defective and shall observe these requirements in the future.

CPA086: The Company had previously responded to this violation in our August 23, 2017, response. The Company had previously paid the insured under his Medical Payment coverage on August 15, 2017. We are providing this proof again.

(5e) 14 VAC 5-400-70 D

CPA072: The Company had previously addressed this violation in our August 23, 2017, response to the Department. We had made restitution to the insured on August 14, 2017, and addressed it on the August 23, 2017, restitution sheet. We are providing this proof again.

CPA080: The Company had previously responded to this violation in our August 23, 2017, response to the Department. The Department then withdrew this violation in their October 27, 2017, report. We paid the \$49.99 to the insured in June 2015 in a timely manner. Therefore, no payment or interest is owed. A copy of this check is provided.

CPA095: The Company had previously agreed to this violation regarding the Total Loss tax. We have issued restitution to the Insured for \$3.56 and a copy of the check is provided.

CPA095: The Company had previously responded to this violation regarding CDW and the Department withdrew the violation in their October 27, 2017 report. Our initial contact letter to the insured clearly outlines that the insured's Rental Car Benefit does not include mileage, gas charges, or additional insurance. This letter was mailed 8 days prior to the start of the insured's rental period. Therefore, the Company respectfully requests that this violation be withdrawn.

(14) 38.2-2204

CPA041: Please see the Company's response to CPA041 under section 5d.

Homeowners Claims

(4a) CHO020 – Mercury has sent the Restitution amount of \$687.46 plus 6% simple interest of \$41.26 for a total of \$728.72 to the Commonwealth of Virginia Department of the Treasury. A copy of the check is attached.

CHO049 – Screen shot of conversation between Mercury and insured is attached.

CHO056 – Please see documentation that Mercury reached out to the insured regarding indemnification for electrical expense. Screen shot of activity log is attached and letter dated April 6, 2016, is attached.

(4b) CHO004 - Check in the amount of \$1,116.18 payable to Virginia Treasurer has been sent to the Commonwealth Treasury. This reflects payment of the Replacement Cost value of the personal Property loss of \$1,053.00 plus \$63.18 in simple interest at 6%. A record of the check's issuance is attached.

(4c) CHO047 – A check was issued in the amount of \$48.92 on 03/17/2017. The check cleared on 03/29/2017. The amount reflects payment of \$46.16 for improper deduction of normal expenses from ALE payment plus \$2.76 reflecting 6% simple interest. A record of the check's issuance is attached.

(5a) CHO067 – Mercury concedes this violation, which consisted of misstating that a \$5,000 limit would apply to costs associated with mold remediation. Mercury notes, however, that the violation is moot because no need for such remediation was ever documented and no claim was ever made for expenses associated with mold remediation.

PART TWO – CORRECTIVE ACTION PLAN

The Company has implemented, or will be implementing as soon as administratively possible, the corrective actions reflected in the responses above.

General

The Company is providing copies of the 2015 application and 2015 Declarations page wherein the driver exclusion revision was made.

Rating

(3) The Company is providing the check numbers for the restitution made on RHO016 and RHO030. See restitution sheet.

The Company has made all necessary restitution.

Terminations

- (1) The Company has made all necessary restitution.

Claims

- (1) The Company has made all necessary restitution.

Notices

- (1) The Notice of Financial Information and Collection Practices was revised and implemented 9/2017
- (2) The Important Information Regarding Your Insurance notice was revised and implemented 9/2017 for Homeowners and 9/2016 for Private Passenger Auto.

PART THREE – RECOMMENDATIONS

Thank you for the recommendations. We have reviewed them and have implemented changes to address them, either by changes to processes or training.

SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



P.O. BOX 1157
RICHMOND, VIRGINIA 23218
1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219
TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

April 19, 2018

VIA UPS 2nd DAY DELIVERY

Laura A. Wade
Division Manager-Claims
Mercury Insurance
686 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807

Re: Market Conduct Examination
Mercury Casualty Company (NAIC# 11908)
American Mercury Insurance Company (NAIC# 16810)
Examination Period: September 1, 2014 – August 31, 2015

Dear Ms. Wade:

The Bureau of Insurance (Bureau) has reviewed the March 15, 2018 response to the Preliminary Market Conduct Report (Report) of Mercury Casualty Company and American Mercury Insurance Company (Company). The Bureau has referenced only those items in which the Company has disagreed with the Bureau's findings, or items that have changed in the Report. This response follows the format of the Report.

Part One – Examiners' Observations

Automobile New Business Rating

- (3d) The violation for RPA009 remains in the Report. The Current Carrier Report in the policy file showed the insured had prior continuous coverage without a lapse. The Company incorrectly determined the tier based upon the agent's selection that was not supported by the policy file.
- (3e) The violations for RPA006, RPA008, RPA023, RPA034 and RPA044 remain in the Report. The Company has stated in its response that the information in the Company's system is conflicting. The Bureau acknowledges the Company's response that this issue has been corrected.

Homeowners New Business Rating

- (3b) The violation for RHO036 remains in the Report. The screenshots provided by the Company indicate the different classifications that are available for selection within the Company's system. However, the CLUE report provided by the Company in their 3rd response shows the loss on October 13, 2012 classified as a Theft/Burglary. Therefore, the policy should have been rated using the Theft/Burglary classification.

Terminations

Automobile Cancellation Notices Mailed Prior to the 60th Day

- (4) After further review the violations for TPA008 and TPA014 have been withdrawn from the Report.

Automobile Nonpayment of Premium Cancellations

- (2b) The violation for TPA049 remains in the Report. Please confirm that the Company is extending the termination for the lienholders interest to 15 days from the notice date to the lienholder.

Automobile Non-Renewals

- (1) After further review the violation for TPA073 and TPA075 have been withdrawn from the Report.

Homeowner Cancellation Notices Mailed Prior to the 90th Day

- (1) After further review, the violation for THO022 has been withdrawn from the Report. The Company provided the billing screens showing the total payment amount of \$672.00.
- (2) After further review, the violation for THO003 has been withdrawn from the Report. The Company provided a legible copy of the proof of mailing.

Homeowner Cancellation Notices Mailed After the 89th Day

- (1) After further review, the violation for THO056 has been withdrawn from the Report. The Company provided a legible copy of the proof of mailing.

Private Passenger Automobile Claims

- (5d) The Company has now provided evidence of restitution on CPA041 and CPA086 in its March 15, 2018 response.
- (5e) The Company has now provided evidence of restitution on CPA072 in its March 15, 2018 response.

After further review, the violation of CPA080 has been withdrawn from the Report.

The Company has now provided evidence of restitution for sales tax on CPA095 in its March 15, 2018 response

The Company continues to state that review sheet ClaimVehPPA-1040099230 was withdrawn. It was not withdrawn. The Company is referencing withdrawn review sheet ClaimVehPPA-2043163857 which is not related to the violation under review. The violation for CPA095, review sheet ClaimVehPPA-1040099230, resulted from an underpayment for CDW. The Company has provided a form letter as evidence of notice to the insured regarding the exclusion of CDW expenses. This form letter was not in the file reviewed by the Bureau at the time of the examination. There is another letter in the file dated August 25, 2015, but it does not address CDW. Therefore, the Company should issue payment to the insured in the amount of \$14.99 plus six percent (6%) simple interest. The Company also owes the insured the tax difference on his total loss in the amount of \$3.36, see review sheet ClaimVehPPA-230605472. The total owed to the insured for CDW and tax, including six percent (6%) interest, is \$19.45.

Homeowners Claims

- (4a) The violation for CHO020 remains in the Report. The Company has provided evidence to support the restitution amount of \$687.46 plus six percent (6%) simple interest sent to the Commonwealth of Virginia Department of the Treasury.

After further review, the violation for CHO049 has been withdrawn from the Report.

After further review the violation for the underpayment of the electric bill on CHO056 has been withdrawn.

- (4b) The violation for CHO004 remains in the Report. The Company has provided evidence to support the restitution amount of \$1,053.00 plus six percent (6%) simple interest sent to the Commonwealth of Virginia Department of the Treasury.

- (4c) The violation for CHO047 remains in the Report. The Company has provided proof of restitution for \$46.16 plus six percent (6%) simple interest.

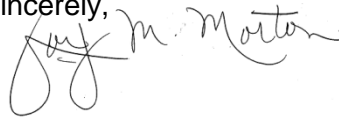
Part Two – Corrective Action Plan

Claims

- (1) The Company should make the outstanding restitution as indicated in the revised Restitution Spreadsheet enclosed.

We have made the changes noted above to the Market Conduct Examination Report. Enclosed with this letter is a revised version of the Report, technical reports and Restitution Spreadsheet. The Company's response to this letter is due in the Bureau's office by May 11, 2018.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large initial "J" and "M".

Joy M. Morton
Manager
Market Conduct Section
Property and Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov

Enclosures

COMPANY'S WRITTEN RESPONSE
TO
MARKET CONDUCT EXAMINATION REPORT
AS OF
August 31, 2015

American Mercury Insurance Company
and
Mercury Casualty Company

Date: May 11, 2018

685 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807
(908) 243-1800

The following are the Company's responses to the most recent draft Market Conduct Examination Report as of August 31, 2015, as modified by the letter from the Bureau of Insurance dated April 19, 2018. Throughout these responses the "Company" or "Mercury" means Mercury Casualty Company or American Mercury Insurance Company, as applicable. The "Bureau" or the "Department" refers to the Bureau of Insurance for the Commonwealth of Virginia.

For the most part the Company responds below only to those findings and observations that it disputes, however in some cases the Company has included comments while not disputing the examiners' findings.

PART ONE – EXAMINERS' OBSERVATIONS

Automobile New Business Rating

- (3d) RPA009: The Company acknowledges the Bureau's finding that the agent's indication of a lapse in coverage was not supported in the Underwriting file.
- (3e) RPA006, RPA008, RPA023, RPA034, RPA044: The Company acknowledges the Bureau's acknowledgment that the Company's system has been updated and no longer allows conflicting information regarding vehicle purchase date and new/used vehicle classification.

Homeowners New Business Rating

- (3b) Regarding RHO036, the Company respectfully disagrees. The attached screen shots show the loss from October 13, 2012 is classified correctly. It is classified as 'other' for claim type (notice in the prior response and the screenshots below that the drop down does not include an option for 'theft' in this category) and claim cause is 'theft.' Please remove this violation.

TERMINATIONS

Automobile Nonpayment of Premium Cancellations

- (2b) TPA049: The Company is in the process of updating its lienholder notification process. Presently, the Company will refer to the Loss Payable clause in the course of investigating a claim presented by a lienholder, and afford coverage in accordance with the required notice period.

Private Passenger Automobile Claims

- (5e) CPA095: The Company had previously responded to this violation regarding the Total Loss tax and CDW. In our March 15, 2018 response to the Bureau we had agreed to the violation regarding the Total Loss tax and restitution was made. We are once again

providing a copy of this check. Regarding CDW, the Company provided the named insured our Initial Contact letter, which clearly explains that Rental Car Benefits do not include mileage, gas charges, or additional insurance. This letter was mailed to the insured 8 days prior to the start of the insured's rental period. While the Company does not agree with the violation regarding the CDW, the payment requested by the Bureau has been made. A copy of the CDW restitution check is provided.

PART TWO – CORRECTIVE ACTION PLAN

Claims

- (1) The Company has made all necessary restitution.

COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

P.O. BOX 1157
RICHMOND, VIRGINIA 23218
1300 E. MAIN STREET
RICHMOND, VIRGINIA 23219
TELEPHONE: (804) 371-9741
www.scc.virginia.gov/boi

May 17, 2018

VIA UPS 2nd DAY DELIVERY

Laura A. Wade
Division Manager-Claims
Mercury Insurance
686 US Highway 202-206, Suite 301
Bridgewater, New Jersey 08807

Re: Market Conduct Examination
Mercury Casualty Company (NAIC# 11908)
American Mercury Insurance Company (NAIC# 16810)
Examination Period: September 1, 2014 – August 31, 2015

Dear Ms. Wade:

The Bureau of Insurance (Bureau) has concluded its review of the companies' response of May 11, 2018. Based upon the Bureau's review of the companies' correspondence, we are now in a position to conclude this examination. Enclosed is the final Market Conduct Examination Report of Mercury Casualty Company and American Mercury Insurance Company (Report).

PART ONE – EXAMINERS OBSERVATIONS

HOMEOWNERS NEW BUSINESS RATING

(6) After further review, the violation for RHO035 has been withdrawn.

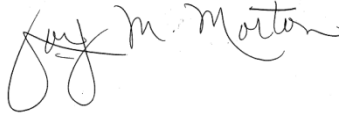
Based on the Bureau's review of the Report and the companies' responses, it appears that a number of Virginia insurance laws and regulations have been violated, specifically:

Sections 38.2-305 A, 38.2-305 B, 38.2-502 1, 38.2-510 A 1, 38.2-510 C, 38.2-610 A, 38.2-1318, 38.2-1812, 38.2-1822, 38.2-1833, 38.2-1906 A, 38.2-1906 D, 38.2-2113 A, 38.2-2113 C, 38.2-2114 A, 38.2-2114 C, 38.2-2114 I, 38.2-2120, 38.2-2125, 38.2-2126 B, 38.2-2129, 38.2-2204, 38.2-2208 A, 38.2-2208 B, 38.2-2212 D, 38.2-2212 E, 38.2-2212 F, 38.2-2214, 38.2-2220, 38.2-2223, and 38.2-2234 B of the Code of Virginia; and 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D of the Virginia Administrative Code.

Violations of the laws mentioned above provide for monetary penalties of up to \$5,000 for each violation as well as suspension or revocation of an insurer's license to engage in the insurance business in Virginia.

In light of the above, the Bureau will be in further communication with you shortly regarding the appropriate disposition of this matter.

Sincerely,

A handwritten signature in black ink that reads "Joy M. Morton". The signature is written in a cursive style with a large, stylized initial "J" and "M".

Joy M. Morton
Manager
Market Conduct Section
Property and Casualty Division
(804) 371-9540
joy.morton@scc.virginia.gov



Joseph B. Miller
General Counsel
4484 Wilshire Blvd.
Los Angeles, CA 90010
Direct Dial: (323) 857-4958
Fax: (877) 397-9901
jbmill@mercuryinsurance.com

June 15, 2018

BY FEDEX

Rebecca Nichols
Deputy Commissioner
Property & Casualty
Virginia Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219

**RE: Market Conduct Examination Settlement Offer
Ecase/Docket Number: INS-2018-00160**

Dear Ms. Nichols:

This will acknowledge receipt of the Bureau of Insurance's letter dated May 24, 2018, concerning the above-referenced matter.

We wish to make a settlement offer on behalf of the insurance companies listed below for the alleged violations of §§ 38.2-305 A, 38.2-305 B, 38.2-502 1, 38.2-510 A 1, 38.2-510 C, 38.2-610 A, 38.2-1318, 38.2-1812, 38.2-1822 A, 38.2-1833, 38.2-1906 A, 38.2-1906 D, 38.2-2113 A, 38.2-2113 C, 38.2-2114 A, 38.2-2114 C, 38.2-2114 I, 38.2-2120, 38.2-2125, 38.2-2126, 38.2-2129, 38.2-2204, 38.2-2208 A, 38.2-2208 B, 38.2-2212 D, 38.2-2212 E, 38.2-2212 F, 38.2-2214, 38.2-2220, 38.2-2223, and 38.2-2234 B of the Code of Virginia; and 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D of the Virginia Administrative Code, to indicate a general business practice.

1. We enclose with this letter two checks payable to the Treasurer of Virginia in the total amount of \$74,700.00 (\$32,031.75 from American Mercury Insurance Company and \$42,668.25 from Mercury Casualty Company, based on their proportionate share of alleged violations).
2. We agree to comply with the corrective action plan set forth in the companies' letters of March 31, 2017, August 23, 2017, January 4, 2018, March 15, 2018, and May 11, 2018.



Virginia Bureau of Insurance
RE: Ecase/Docket No. INS-2018-00160
June 15, 2018
Page 2 of 2

3. We confirm that restitution was made to 69 consumers for a total of \$24,251.93 in accordance with the companies' letters of March 31, 2017, August 23, 2017, January 4, 2018, March 15, 2018, and May 11, 2018.¹
4. We further acknowledge the companies' right to a hearing before the State Corporation Commission in this matter and waive that if the State Corporation Commission accepts this offer of settlement.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Sincerely,
MERCURY CASUALTY COMPANY
AMERICAN MERCURY INSURANCE COMPANY

Date:

6/15/18

Joseph B. Miller
General Counsel

JBM/tw

¹ Your letter of May 24 mentioned that our companies had paid \$24,580.38 in restitution to 71 consumers. After reviewing the referenced letters from our companies, and discussing with the company employees involved in the examination, we are unable to account for the difference of \$328.45. Attached is a copy of the final restitution spreadsheet that was included with our letter of May 11, 2018. This settlement offer is not contingent upon the resolution of this discrepancy: we will issue further restitution if the error is ours.

COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

P.O. BOX 1157
RICHMOND, VIRGINIA 23218
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www.scc.virginia.gov/boi

Mercury Casualty Company and American Mercury Insurance Company have tendered to the Bureau of Insurance the settlement amount of \$74,700.00 by their checks numbered 00081309 and 00012144 and dated June 13, 2018, copies of which are located in the Bureau's files.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 10, 2018

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2018 JUL 10 P 4: 08

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2018-00160

MERCURY CASUALTY COMPANY,
and
AMERICAN MERCURY INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination conducted by the Bureau of Insurance ("Bureau"), it is alleged that Mercury Casualty Company and American Mercury Insurance Company ("Defendants"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia ("Virginia"), in certain instances violated § 38.2-305 A of the Code of Virginia ("Code") by failing to provide the information required by statute in the insurance policy; §§ 38.2-305 B, 38.2-610 A, 38.2-2120, 38.2-2125, and 38.2-2129 of the Code by failing to accurately provide the required notices to insureds; § 38.2-502 (1) of the Code by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; § 38.2-1318 of the Code by failing to provide convenient access to files, books and records; §§ 38.2-1812 A and 38.2-1833 of the Code by paying commissions to agencies/agents that are not appointed by the Defendants; § 38.2-1822 A of the Code by permitting an unlicensed agent to act on the Defendants' behalf; §§ 38.2-1906 A and 38.2-1906 D of the Code by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants; §§ 38.2-2113 A, 38.2-2113 C, 38.2-2114 A, 38.2- 2114 C, 38.2-2114 I, 38.2-2208 A,

38.2-2208 B, 38.2-2212 D, 38.2-2212 E and 38.2-2212 F of the Code by failing to properly terminate insurance policies; § 38.2-2204 of the Code by attempting to exclude a driver contrary to the statute; § 38.2-2214 of the Code by failing to have a rate classification statement available for use; § 38.2-2220 of the Code by failing to use forms in the precise language of standard forms previously filed and adopted by the Commission; § 38.2-2223 of the Code by failing to file and obtain approval from the Commission of forms prior to use; §§ 38.2-2126 B and 38.2-2234 B of the Code by failing to update the insured's credit information at least once in a three-year period; §§ 38.2-510 A (1) and 38.2-510 C of the Code and 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 D and 14 VAC 5-400-80 D of the Commission's Rules Governing Unfair Claim Settlement Practices, 14 VAC 5-400-10 *et seq.* ("Rules"), by failing to properly handle claims with such frequency as to indicate a general business practice.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke a defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that a defendant has committed the aforesaid alleged violations.

The Defendants have been advised of the right to a hearing in this matter whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have agreed to comply with the corrective action plan outlined in company correspondence dated March 31, 2017, August 23, 2017, January 4, 2018, March 15, 2018, and May 11, 2018; have tendered to Virginia the amount of Forty-two Thousand Six Hundred Sixty-eight Dollars and Twenty-five Cents (\$42,668.25) from Mercury Casualty Company and Thirty-two Thousand Thirty-one Dollars and Seventy-five Cents (\$32,031.75) from American Mercury Insurance Company for their proportionate share of the

alleged violations for a total amount of Seventy-four Thousand Seven Hundred Dollars (\$74,700); confirmed that restitution was made to 69 consumers in the amount of Twenty-four Thousand Two Hundred Fifty-one Dollars and Ninety-three cents (\$24,251.93); and waived the right to a hearing.

The Bureau has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein is hereby accepted.
- (2) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Joseph B. Miller, General Counsel, Mercury Insurance, 4484 Wilshire Boulevard, Los Angeles, California 90010; and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Rebecca Nichols.