

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made this 26th day of September, 2019 by and between the CALIFORNIA DEPARTMENT OF INSURANCE ("CDI"), on the one hand, and MERCURY INSURANCE COMPANY ("MIC"), MERCURY CASUALTY COMPANY ("MCC") AND CALIFORNIA AUTOMOBILE INSURANCE COMPANY ("CAIC") (collectively, "MERCURY"), on the other hand. The CDI, MIC, MCC, and CAIC are each a "Party" and are collectively the "Parties."

WHEREAS, on or about February 2, 2004, the CDI issued and served upon MERCURY a Notice of Noncompliance Pursuant to California Insurance Code Section 1858.1, Accusation Pursuant to California Insurance Code Section 704, and Order to Show Cause, Statement of Charges, and Notice of Hearing Pursuant to California Insurance Code Sections 790.035 and 790.05 (CDI File No. NC-03027545) (the "Original Notice");

WHEREAS, on or about March 22, 2006, the CDI issued and served upon MERCURY a First Amended Notice of Noncompliance Pursuant to California Insurance Code Section 1858.1, Accusation Pursuant to California Insurance Code Section 704, and Order to Show Cause, Statement of Charges, and Notice of Hearing Pursuant to California Insurance Code Section 790.035/790.05 (CDI File No. NC-03027545) (the "First Amended Notice");

WHEREAS, on or about April 11, 2011, the CDI issued and served upon MERCURY a Second Amended Notice of Noncompliance Pursuant to California Insurance Code Section 1858.1, Accusation Pursuant to California Insurance Code Section 704, and Order to Show Cause, Statement of Charges, and Notice of Hearing Pursuant to California Insurance Code Section 790.035/790.05 (CDI File No. NC-03027545) (the "Second Amended Notice");

WHEREAS, on January 31, 2012, administrative law judge Steven Owyang issued a "Bifurcation Order" in which he bifurcated for separate hearings and decision the CDI's Notice of Noncompliance (sometimes referenced by the Parties as "Phase I") and the CDI's Accusation and Order to Show Cause (sometimes referenced by the Parties as "Phase II");

WHEREAS, the entirety of the issues and/or claims arising from the Original Notice, First Amended Notice, Second Amended Notice, Phase I or Phase II is hereby referenced herein as the "ACTION";

WHEREAS, a hearing was held on the CDI's Notice of Noncompliance;

WHEREAS, on December 5, 2014, Administrative Law Judge Michael A. Scarlett issued a proposed decision holding, *inter alia*, that Mercury's de facto agents charged unapproved fees that constituted premium resulting in violations of: 1) California Insurance Code section 1861.01(c) for charging unapproved premium; and 2) California Insurance Code section 1861.05(a) for charging unfairly discriminatory rates. The proposed decision also held that Mercury shall be assessed a civil penalty in the amount of \$27,593,550 pursuant to California Insurance Code section 1858.07(d).

WHEREAS, on January 7, 2015, Insurance Commissioner Dave Jones issued an Order Adopting the Proposed Decision and Penalty. (the "Phase I Decision");

WHEREAS, MERCURY filed a petition for writ of mandate in Orange County Superior Court Action No. 30-2015-00770552-CU-JR-CXC to review the Phase I Decision, after which the Orange County Superior Court issued an order on August 12, 2016 to grant, in part, MERCURY's petition for writ of mandate requiring the CDI to vacate the Phase I Decision;

WHEREAS, following an appeal filed by the CDI, the California Court of Appeal, Fourth Appellate District, Division Three, issued a decision, *Mercury Insurance Co. v. Lara*, 35 Cal. App. 5<sup>th</sup> 82 (2019), in which the appellate court reversed the trial court's decision, directed the writ petition challenging the Phase I Decision to be denied in its entirety, and determined CDI to be the prevailing party – thus upholding the \$27,593,550 penalty against Mercury;

WHEREAS, on August 14, 2019, the California Supreme Court denied MERCURY's petition for review;

WHEREAS remittitur was issued on August 15, 2019. Judgment has not yet been entered, and memoranda of costs have not yet been filed.

WHEREAS, the Parties wish to settle any and all remaining aspects between them relating to the ACTION. As intervenors are not a party to this Agreement, the Parties do not with this Agreement intend to settle any claims for intervenor fees that may be made by intervenors for their involvement in the judicial proceedings;

NOW, THEREFORE FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Settlement and Parties' Consideration. In exchange for a global settlement of the entirety of the ACTION between the Parties, including claims for fines, penalties, interests, costs and/or fees sought and/or incurred by the CDI in connection with any and all aspects of the ACTION, including claims by CDI for costs incurred at the trial and appellate courts, MERCURY agrees to pay the CDI a total of forty-one million, one hundred eighty-eight thousand, five hundred five dollars (\$41,188,505).

- a. It is expressly understood by the Parties that the total amount required to be paid by MERCURY under this paragraph includes (1) thirty-five million, one-hundred ninety-two thousand, seven-hundred thirty-eight dollars (\$35,192,738) that has already been paid by MERCURY to and received by the CDI on or about September 3, 2019; (2) and an additional \$5,995,767 to settle the balance of the Action.
- b. While Mercury has asserted a dispute as to the amount of interest owed on the Phase I penalty, Mercury acknowledges that of the \$41,188,505, CDI will record \$35,727,637 as payment in full of the Phase I penalty (\$27,593,550) plus interest (of \$8,134,087 through September 20, 2019). The remainder of \$5,460,868 shall be applied to settle the balance of the Action (Phase II), reflecting \$4,960,868 in intervenor fees paid for the Phase I administrative hearing, and costs reimbursement to CDI for its expenses in pursuing the Action, which shall be deemed to include any and all fees of the Attorney General, CDI staff fees, expenses, and costs,

and costs of suit (all of which shall be repaid to the Proposition 103 Fund), plus an additional penalty of \$500,000 (which shall be paid to the California General Fund). By entering into this Agreement, Mercury does not agree that it is responsible for the payment of intervenor fees, but for purposes of settlement, Mercury has agreed to reimburse the CDI for the intervenor fees previously incurred by the CDI.

- c. The balance (\$5,995,767) will be paid by MERCURY to the CDI within five (5) business days of the execution and approval of this Agreement by the CDI and Insurance Commissioner Ricardo Lara (the "Commissioner") and receipt by MERCURY of this fully executed Agreement.
- d. It is expressly understood that the amount specified under paragraph 1 does not include any fees that a court of competent jurisdiction may choose to award to intervenors for their participation in the judicial proceedings at the trial court, on appeal, in the California Supreme Court, and any other fees to which they may lawfully be entitled. By signing this Agreement, MERCURY does not concede or agree to the propriety or merit of any application for fees the intervenors may make to the trial court. MERCURY reserves any and all rights to contest such a motion or the forum in which it is filed.
- e. Within ten (10) days of the execution and approval of the Agreement by the CDI and the Commissioner, the CDI will dismiss the order to show cause and accusation, which is the only remaining administrative proceeding in the ACTION and take steps to administratively close Phase II with the office of administrative hearings. CDI will also tender written acknowledgement that MERCURY has paid in full the penalty issued in the Phase I order. MERCURY and CDI will stipulate to a form of judgment for filing in superior court action no. 30-2015-00770552-CU-JR-CXC, and CDI will immediately file a satisfaction of judgment in that court.

2. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile or by electronically transmitted signature shall be fully and legally binding.

3. No Admission. This Agreement is (1) the compromise of disputed claims and fully and finally settles the ACTION; and (2) to buy peace and to prevent any further involvement between the Parties concerning any and all aspects of the ACTION. Nothing contained in this Agreement, shall be interpreted or construed to be an admission on the part of MERCURY of any allegation raised in the ACTION and/or the notices.

4. Applicable Law. This Agreement will be interpreted and construed in accordance with California law, without regard to choice-of-law considerations.

5. Commissioner Approval. MERCURY acknowledges that Insurance Code section 12921(b)(1) requires the Commissioner to approve the final settlement of this matter. The terms of this Agreement are contingent upon the Commissioner's approval, which shall be evidenced by his signature to this Agreement.

The Parties execute this Agreement as follows:

Date 10/1, 2019

CALIFORNIA DEPARTMENT OF INSURANCE

By: 

RICARDO LARA, Commissioner

Date 9/26, 2019

MERCURY INSURANCE COMPANY

By: 

Title: Gabe Tirador, President

Date 9/26, 2019

MERCURY CASUALTY COMPANY

By: 

Title: Gabe Tirador, President

Date 9/26, 2019

CALIFORNIA AUTOMOBILE INSURANCE  
COMPANY

By: 

Title: Gabe Tirador, President