

ENDORSED
FILED
San Francisco County Superior Court

MAY 16 2003

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

11 ROBERT KRUMME, on Behalf of the General)
12 Public,) No. 313367
13)
14 Plaintiff,)
15)
16 v.) **[PROPOSED] JUDGMENT / INJUNCT**
17) (vm)
18 MERCURY INSURANCE COMPANY;)
19 MERCURY CASUALTY COMPANY;)
20 CALIFORNIA AUTOMOBILE INSURANCE)
COMPANY,)
21)
22 Defendants.)

21 This case was tried to the Court on July 15-18, 2002. After the trial, the Court issued
22 Proposed Findings of Fact and Conclusions of Law. Defendants and Amicus Curiae The
23 American Agents Alliance filed Objections to the Proposed Findings of Fact and Conclusions of
24 Law. The Court ruled on those Objections by issuing its final Findings of Fact and Conclusions
25 of Law, filed April 11, 2003. The Court has considered the evidence and arguments submitted

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JUDGMENT

1 during trial, and the post-trial written submissions and oral arguments of counsel, and hereby
2 ORDERS, ADJUDGES AND DECREES as follows:

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4 1. Injunction. Plaintiff's request to permanently enjoin Mercury Insurance Company, Mercury
5 Casualty Company, and California Automobile Insurance Company (the "Mercury
6 defendants") from selling personal lines automobile and/or homeowners insurance policies
7 through broker-agent licensees ("broker-agents") who are de facto unappointed agents of the
8 Mercury defendants is granted. Accordingly, the following injunctions are hereby issued:

- 9
10 a. Beginning July 1, 2003, no Mercury defendant shall sell any policy of personal
11 lines automobile and/or homeowners insurance in California through a broker-
12 agent who has not been appointed as an agent of the defendant pursuant to
13 Insurance Code section 1704(a); and
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15 b. Beginning July 1, 2003, no Mercury defendant shall sell any policy of personal
16 lines automobile and/or homeowners insurance in California through a broker-
17 agent if the defendant has knowledge that, after that date, the particular broker-
18 agent has charged or is continuing to charge a broker fee for the placement of any
19 policy of personal lines automobile and/or homeowners insurance issued any of
20 the Mercury defendants; and
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22 c. In furtherance of these injunctions, on or before July 8, 2003, each of the
23 defendants shall file with this Court and serve on plaintiff's counsel a compliance
24 statement under oath. This statement shall include a list of all broker-agents with
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1 whom the defendant had a Producer's Contract as of January 1, 2003 for whom a
2 Notice of Appointment pursuant to Insurance Code section 1704(a) had not been
3 filed as of January 1, 2003. This list shall indicate the status of each such broker
4 agent as of July 1, 2003, that is, (i) whether a Notice of Appointment has been
5 filed and, if so, the date of the filing; or (ii) whether the relationship has been
6 terminated and the defendant is no longer selling personal lines automobile and/o
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8 homeowners insurance in California through that broker-agent, or (iii) if a Notice
9 of Appointment has not been filed and the defendant is continuing to sell persona
10 lines automobile and/or homeowners insurance in California through that broker-
11 agent, the reasons for the failure to comply with the terms of this judgment.

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13 2. Stay. If any of defendants files a timely and valid Notice of Appeal, the Court hereby stays
14 the injunctions and provisions set forth in paragraph 1 of this Judgment pending appeal as to
15 that defendant. This stay will automatically terminate on the date the judgment in this action
16 becomes final, except to the extent this Judgment or this stay are modified on appeal or by
17 further order of this Court.

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19 3. Ancillary Order to Maintain and Preserve Records Pending Stay. As a protection for the
20 rights of insureds who pay broker fees on account of personal lines automobile insurance
21 placed with any of the defendants from and after July 1, 2003 if and during the period that the
22 injunction and provisions of paragraph 1 of this Judgment are stayed pending appeal, the
23 Mercury defendants are hereby ordered to obtain, record, and maintain the name, address, and
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1 telephone number of each and every insured who pays a broker fee to any broker-agent on a
2 policy of personal lines automobile and/or homeowners insurance placed with any of the
3 defendants in California from and after July 1, 2003, including the date and amount of the fe
4 so paid and the name of the broker-agent collecting the fee. These records shall be
5 maintained and kept available and shall not be destroyed or disposed of until a period of two
6 years elapses after the judgment in this action becomes final. This provision is necessary to
7 ensure the effectiveness of this judgment and is ^{RLD} ~~not~~ stayed pending appeal.

9 4. Injunction. Plaintiff's request to permanently enjoin the Mercury defendants from engaging
10 in comparative rate advertising that does not disclose that its broker-agents may charge
11 broker fees for the placement of personal lines automobile and/or homeowners insurance is
12 granted. Accordingly, beginning July 1, 2003, no Mercury defendant shall publish any
13 advertising that compares insurance premiums for personal lines automobile and/or
14 homeowners policies without a conspicuous statement in at least 10 point type that a broker
15 fee may be charged in addition to the premium quoted for the Mercury insurance. The text o
16 this disclosure shall be approved by the Court. The provisions and injunction of this
17 paragraph are not stayed pending appeal.

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20 5. Restitution. Plaintiff's requests for restitution of broker fees are denied. Defendants did not
21 actually and directly receive the broker fees and therefore did not "acquire" them as required
22 by Business & Professions Code section 17203. This ruling is without prejudice to the rights
23 of consumers pursuant to section 17203 to seek such restitution directly from the brokers wh
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1 actually and directly received them.

2 6. Enforcement. This Court retains jurisdiction to supervise enforcement of these injunctions.

3 In addition, this Court retains jurisdiction to modify or vacate these injunctions if the
4 Mercury defendants show material changes in a defendant's relationships with broker-agents
5 or a change in the law, provided that each defendant shall comply with this injunction
6 regardless of any changes in their relationships with broker-agents or changes in the law
7 unless and until this Court expressly modifies or vacates the injunctions.
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9 7. Award of Costs. Plaintiff is awarded costs of suit, without prejudice to filing a timely motion
10 for an award of attorney's fees, costs, and expenses of litigation against defendants, which
11 motion shall be noticed and heard in accordance with Code of Civil Procedure sections 1005
12 et seq.
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14 JUDGMENT IS HEREBY ENTERED IN FAVOR OF PLAINTIFF AND AGAINST
15 MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY, CALIFORNIA
16 AUTOMOBILE INSURANCE COMPANY DEFENDANTS ACCORDINGLY:
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18 DATED: May 16, 2003


19 Judge of the Superior Court