

IN THE MATTER OF THE

MARYLAND INSURANCE COMMISSIONER

v.

ESURANCE INSURANCE COMPANY

(NAIC # 25712)

650 Davis Street

San Francisco, CA 94111

* BEFORE THE STATE OF MARYLAND

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* INSURANCE COMMISSIONER

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* CASE NO. MIA-2007-12-010

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CONSENT ORDER

The Maryland Insurance Administration (hereinafter the "Administration") and Esurance Insurance Company (hereinafter referred to as "Respondent") pursuant to § 2-204 of the Insurance Article, Annotated Code of Maryland (2003 Repl. Vol., 2006 Supp.), hereby represent and acknowledge that they agree to enter this Consent Order as follows:

EXPLANATORY STATEMENT

1. At all times relevant to this Order, Respondent held and currently holds a Certificate of Authority from the Maryland Insurance Administration (the "Administration"), to operate as an insurance company.

2. The Administration conducted an investigation into the activities of Respondent.

3. Based on the results of the investigation, the Administration concluded that Respondent violated §12-106 of the Annotated Code of Maryland, Insurance Article (2003 REpl. Vol., 2006 Supp.) (hereinafter "the Insurance Article").¹

¹ All citations to § 12-106 of the Insurance Article refer to the version of the statute that took effect January 1, 2007, and which can be found in the 2006 Supplement. This version was effective until October 1, 2007. At that time, a revised version of the statute took effect. The most recent version of the statute is contained in the 2007 Supplement.

4. Respondent admits to the findings of fact set forth in Paragraph 5 herein. Both Respondent and the Administration agree to the remedial measures set forth herein. The parties agree that this Consent Order is in the public interest, and desire to resolve this matter without further proceedings.

5. The parties to this Consent Order agree to the following findings of fact:

a. Section 12-106(e) (effective January 1, 2007) of the Insurance Article provides as follows:

(e) Underwriting period. – Requirements for notice. – A notice of cancellation under this section shall:

(1) be in writing;

(2) have an effective date not less than 15 days after mailing; and

(3) state clearly and specifically the insurer's actual reason for the cancellation.

b. Bulletin 06-22, dated October 13, 2006, was sent to all property and casualty insurers notifying insurers of the new changes to Section 12-106.

The bulletin stated:

This section of the Insurance Article has been changed to allow insurers to create an underwriting period for certain lines of insurance.

Effective January 1, 2007, §12-106 allows carriers to subject all new binders or policies of private passenger motor vehicle ... issued in the State to a 45 day underwriting period, at the option of the insurer.

c. After the revised version of § 12-106 became effective, Respondent used forms that did not comply with the new version of the statute. Since January 1, 2007, Respondent has issued cancellation notices on 28 policies using a form that did not comply with § 12-106(e), in that they incorrectly provided the applicant with the Right of Protest language required by § 27-613 of the Insurance Article.

6. Respondent admits the violation of § 12-106(e) of the Insurance Article of the Annotated Code of Maryland as stated in paragraph 5 but denies liability to any third-party as a result of the violation.

WHEREFORE, pursuant to §2-204 and §4-113 of the Insurance Article of the Annotated Code of Maryland, the parties agree and it is hereby, with the Consent of the Respondent, **ORDERED**, by the Commissioner, that

A. Respondent shall pay an administrative penalty to the State of Maryland for the violations stated herein in the amount of five thousand dollars (\$5,000.00) within thirty (30) days of the date the Commissioner or his designee signs this Order.

B. Respondent agrees that all amounts paid under Paragraph A of this Order shall not be included in or recoverable as expenses in any rate filing filed with the Administration or any other regulatory authority.

C. For the purposes of the Administration and for any subsequent and unrelated administrative or civil proceedings concerning Respondent, whether related or unrelated to the foregoing paragraphs, and with regard to requests for information about the Respondent made under the Maryland Public Information Act, or properly made by governmental agencies, this Consent Order will be kept and maintained in the regular course of business by the Administration. For the purposes of the business of the Administration, the records and publications of the Administration will reflect this Order.

D. Nothing herein shall be deemed a waiver of the Commissioner's right to proceed in an administrative or civil action for violations of statutes or regulations that are not specifically included in this Consent Order. Additionally, nothing herein shall be construed to release or discharge any criminal liability, and a payment of civil liability does not bar any criminal restitution. In that regard, nothing herein shall be construed to resolve or preclude any

potential or pending criminal charges or action that may arise from the facts that are the subject of this Consent Order. Furthermore, nothing herein shall be construed to resolve or preclude any actions that may be brought by other parties.

E. Respondent has had the opportunity to have this Order reviewed by legal counsel of its choosing, and is aware of the benefits gained, and obligations incurred by the execution of the Order. Respondent waives any and all rights to any hearing or judicial review of this Order to which it would otherwise be entitled under the Insurance Article of the Annotated Code of Maryland with respect to any of the determinations made or actions ordered by this Consent Order.

F. Administrative penalties should be made payable to the Maryland Insurance Administration and include the case number or name. Payment should be sent to the attention of Appeals Clerk, 525 St. Paul Place, Baltimore, MD 21202-2272. Unpaid penalties will be referred to the Central Collection Unit for collections.

G. This Consent Order contains the Entire Agreement between the parties relating to the administrative actions addressed herein. This Consent Order supersedes any and all earlier agreements or negotiations, whether oral or written with regard to those actions. All timeframes set forth in this Order may be amended or modified only by subsequent written agreement of the parties.

H. The undersigned representative of Respondent affirms that he or she has taken all necessary steps to obtain the authority to bind Respondent to the obligations stated herein and has the authority to bind Respondent to the obligations stated herein.

I. This Order shall be effective upon signature of the Commissioner or his designee. This Consent Order is a Final Order of the Commissioner under §2-204 of the Insurance Article, Annotated Code of Maryland (2003 Repl. Vol.).

J. Failure to comply with the terms of this Consent Order may subject Respondent to further legal and/or administrative action.

It is so **ORDERED**, this 12th day of December, 2007.

Ralph S. Tyler
Insurance Commissioner

Signature on file with original.

by: P. Todd Cioni, Associate Commissioner
Compliance and Enforcement

RESPONDENT'S CONSENT

RESPONDENT hereby CONSENTS to the representations made in, and to the terms of the above Order.

Scott A. McCrae
Name: _____

Signature on file with original.
Signature: _____

Vice President
Title: _____

11/29/07
Date: _____