

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
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6 California Insurance Commissioner

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8 **BEFORE THE INSURANCE COMMISSIONER**
9 **STATE OF CALIFORNIA, LOS ANGELES**

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11 In the Matter of the Licenses and Licensing
Rights of

12 **FIRST AMERICAN INSURANCE**
13 **COMPANY, d.b.a. American First**
14 **Insurance Company,**

15 Respondent.

File Nos.: UPA 02-02-2887- AP
LO 02-02-6066 - AP

OAH No. N-2003080515

**ORDER TO SHOW CAUSE, STATEMENT
OF SPECIFIC CHARGES/ACCUSATION,
NOTICE OF MONETARY PENALTY**

CIC §§ 560, 704(b), 704.7, 790.03-790.05,
790.10, 1871.3(a), 1874.87, 1879.2; CCR §§
2632.13(e) 2, 2695.1 - 2695.17; CVC § 11515(b)

16 Date: October 16 & 17, 2003
17 Time: 9:00 A.M.

18 Place: Office of Administrative Hearings
19 1515 Clay Street, Suite 206
20 Oakland, CA 94612

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23 **ORDER TO SHOW CAUSE**

24 WHEREAS, the Insurance Commissioner of the State of California (hereafter, “the
25 Commissioner”) has reason to believe that FIRST AMERICAN INSURANCE COMPANY,
26 d.b.a. American First Insurance Company, hereinafter referred to as “Respondent,” has engaged
27 in or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or
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1 practices, and other unlawful acts, as set forth in the STATEMENT OF SPECIFIC
2 CHARGES/ACCUSATION contained herein; and

3 WHEREAS, the Commissioner has reason to believe that a proceeding with respect to the
4 alleged acts of Respondent would be in the public interest;

5 NOW, THEREFORE, and pursuant to the provisions of Section 790.05 of the California
6 Insurance Code, Respondent is ordered to appear before the Commissioner on **October 16 & 17,**
7 **2003 at the Office of Administrative Hearings, 1515 Clay Street, Suite 206 Oakland, CA**
8 **94612 at 9:00 A.M.,** and show cause, if any cause there be, why the Commissioner should not
9 issue an Order requiring Respondent to Cease and Desist from engaging in the methods, acts, and
10 practices set forth in the STATEMENT OF SPECIFIC CHARGES/ACCUSATION contained
11 herein in Paragraph 6, and imposing the penalties set forth in Section 790.035 of the Insurance
12 Code and in the NOTICE OF MONETARY PENALTY, Paragraph 9 herein.

13 **GENERAL STATEMENT**

14 1. From July 19, 1985 to the present Respondent has been the holder of a Certificate
15 of Authority (Certificate Number 3005-6) issued by the Commissioner to act in the capacity of a
16 property and casualty insurer.

17 2. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, Sections 730,
18 733, 736 and Article 6.5, Section 790.04 of the California Insurance Code and Title 10, Chapter
19 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, the Commissioner
20 made an examination of the Respondent's claims practices and procedures in California. The
21 examination covered Respondent's claims handling practices during the period June 1, 2000
22 through May 31, 2001. The examination was made to discover, in general, if these and
23 Respondents' other operating procedures conform with the contractual obligations in the
24 insurance policy forms, to provisions of the California Insurance Code ("CIC"), the California
25 Code of Regulations ("CCR"), other insurance related statutes, and case law. The examination
26 (hereinafter "The Examination") included reviews of:

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1 a) The guidelines, procedures, training plans and forms adopted by
2 Respondent for use in California, including any documentation maintained by Respondent in
3 support of positions or interpretations of fair claims settlement practices;

4 b) the application of such guidelines, procedures and forms, by means of an
5 examination of claims files and related records; and,

6 c) consumer complaints received by the California Department of Insurance
7 in the most recent year prior to The Examination.

8 3. The Examination was conducted at Respondent's claims office in Alamo,
9 California. The examiners reviewed a total of one hundred eighty-six (186) personal auto claim
10 files. The review identified one-hundred-four (124) claims handling violations, all under CIC
11 Section 790.03 (h) and the Fair Claims Settlement Practices found in CCR, Title 10, Chapter 5,
12 Subchapter 7.5, Sections 2695.3 through 2695.8 (adopted pursuant to CIC Section 790.034). The
13 pattern and frequency of the violations indicate a general business practice.

14 4. In addition, to the Fair Claims Settlement Practices Act violations, the examiners
15 identified twenty (20) violations of other sections of the CIC and CCR, including CCR Section
16 2632.13(e) 2 for failure to advise the insured of the person principally at fault and the percentage
17 of fault; California Vehicle Code Section 11515(b) for failure to notify the Department of Motor
18 Vehicles that the owner of a total loss salvage vehicle retained possession of the vehicle, or of
19 failure to notify the insured or owner of their responsibility to comply with California Vehicle
20 Code Section 11515(b). The pattern and frequency of the violations indicate a general business
21 practice.

22 5. Subsequent to The Examination, Department examiners found six (6) violations of
23 CCR Section 2695.8(b) and five (5) violations CCR Section 2695.7(g). The violations resulted
24 from consumer complaints filed with the Department. The pattern and frequency of the violations
25 indicate a general business practice.

26 **STATEMENT OF SPECIFIC CHARGES/ACCUSATION**

27 6. As a result of the Examination, the Commissioner, in his official capacity, now
28 alleges that Respondent has violated provisions of the Fair Claims Settlement Practices

1 Regulations (CCR, Title 10, Chapter 5, § 2695.1 et seq.), CCR, and CIC, as follows:

2 a) In 6 instances, Respondent's claim files failed to contain all documents,
3 notes and work papers which pertain to the claim, in violation of CCR § 2695.3(a).

4 b) In 13 instances, Respondent failed to disclose all benefits, coverage, time
5 limits or other provisions of the insurance policy, in violation of CCR § 2695.4(a).

6 c) In 4 instances, Respondent failed to respond within fifteen days of
7 receiving a communication that reasonably suggests that a response is expected, in violation of
8 CCR § 2695.5(b).

9 d) In 6 instances, Respondent failed to acknowledge notice of claim within
10 fifteen calendar days of receipt of notice of claim, in violation of CCR § 2695.5(e) (1).

11 e) In 7 instances, Respondent failed to provide necessary forms, instructions
12 and reasonable assistance within fifteen calendar days from receipt of notice of claim, in violation
13 of CCR § 2695.5(e) 2.

14 f) In 9 instances, Respondent failed to begin necessary investigation upon
15 notice of claim, in violation of CCR § 2695.5(e) 3.

16 g) In 6 instances, Respondent failed, upon receiving proof of claim, to accept
17 or deny the claim within forty calendar days, in violation of CCR § 2695.7(b).

18 h) In 3 instances, Respondent failed to state in writing the factual basis for the
19 denial of a claim, in violation of CCR § 2695.7(b) 1.

20 i) In 5 instances, Respondent failed to reference the California Department of
21 Insurance in claim denial letters, in violation of CCR § 2695.7(b) 3.

22 j) In 3 instances, Respondent failed to provide written notice of the need for
23 additional time every thirty calendar days, in violation of CCR § 2695.7(c) (1).

24 k) In 5 instances, Respondent persisted in seeking information not reasonably
25 required for or material to the resolution of a claim dispute, in violation CCR § 2695.7(d).

26 l) In 1 instance, CASUALTY failed to notify claimant of applicable statute of
27 limitations, in violation of CCR § 2695.7(f).

28 m) In 15 instances, Respondent attempted to settle a claim by making a

1 settlement offer that was unreasonably low, in CCR § 2695.7(g). Five (5) of these violations
2 resulted from consumer complaints filed with the Department.

3 n) In 17 instances, Respondent failed to tender payment of claim
4 immediately, but in no event more than 30 days from acceptance of the claim, in violation of
5 CCR § 2695.7(h).

6 o) In 18 instances, Respondent failed to provide the *first party* claimant the
7 written basis for the total loss settlement and/or provide the insured with a list of comparable
8 valuations and/or failed to pay all fees and taxes, in violation of CCR Section § 2695.8(b)(1). Six
9 (6) of these violations resulted from consumer complaints filed with the Department.

10 p) In 3 instances, Respondent failed to supply the claimant with a copy of the
11 estimate upon which the settlement is based, in violation of CCR § 2695.8(f).

12 q) In 11 instances, Respondent failed to provide written notification to a first
13 party claimant as to whether Respondent intends to pursue subrogation of the claim, in violation
14 of CCR § 2695.8(i).

15 r) In 3 instances, Respondent failed to document the basis of betterment,
16 depreciation, or salvage, in violation of CCR § 2695.8(k).

17 s) In 1 instance, Respondent failed to provide reasonable notice before
18 terminating payment for storage charges, in violation CCR § 2695.8(l).

19 t) In 4 instances, Respondent failed to provide written notice to the insured of
20 the person principally at fault and the percentage of fault, in violation of CCR § 2632.13(e) 2.

21 u) In 1 instance, Respondent failed to pay the claim within 10 days of the
22 receipt of an itemized bill or invoice, in violation of CIC § 560.

23 v) In 2 instances, Respondent failed to secure from the insured a proper claim
24 form containing required information, in violation of CIC § 1871.3(a).

25 w) In 2 instances, Respondent failed to supply the insured with a copy of the
26 Auto Body Repair Consumer Bill of Rights, in violation CIC § 1874.87.

27 x) In 10 instances, respondent failed to include California fraud warning on
28 insurance forms, in violation of CIC § 1879.2.

1 y) In 1 instance, Respondent failed to notify the insured or owner of their
2 responsibility to comply with Department of Motor Vehicles requirements for an owner-retained.

3 **PRAYER AND NOTICE OF MONETARY PENALTY**

4 7. WHEREFORE, Petitioner prays for judgment against Respondent, as follows:

5 a) An Order to Cease and Desist from engaging in such unfair acts or
6 practices in violation of CIC Section 790.03 and the regulations promulgated pursuant to CIC
7 Section 790.10, and other insurance code sections and related statutes, as set forth above;

8 b) Pursuant to CIC Section 790.035, for willful acts in violation of CIC
9 Section 790.03 and CCR, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.1 through 2695.17
10 (adopted pursuant to CIC Section 790.034), as set forth above, a penalty in an amount to be fixed
11 by the Commissioner not to exceed ten thousand dollars (\$10,000.00) for each act; and for each
12 unfair or deceptive act or practice not found to be willful, a penalty in an amount to be fixed by
13 the Commissioner not to exceed five thousand dollars (\$5,000.00) for each act;

14 c) For acts in violation of CIC Section 704(b) suspension of Respondent's
15 certificate of authority for a period not exceeding one year or a fine of fifty-five thousand dollars
16 (\$55,000) in lieu of suspension pursuant to CIC Section 704.7;

17 d) Full restitution and or reimbursement for acts or omissions in violation of
18 CCR Section 2695.8(b)(1) and DMV Section 11515.2(b).

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20 Dated: August 21, 2003

21 JOHN GARAMENDI
22 Insurance Commissioner

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24 By -s-
25 Ramón Cintrón
26 Staff Counsel