

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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8 **BEFORE THE INSURANCE COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

10
11 In the Matter of

12 MERCURY INSURANCE
COMPANY,

13 Respondent.
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File No. SF 04041586

OAH No. N2005050516

**ORDER TO SHOW CAUSE AND
STATEMENT OF CHARGES; NOTICE
OF MONETARY PENALTY**

(Insurance Code §§704(b), 790.05 and
790.035)

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17 WHEREAS, the Insurance Commissioner of the State of California (hereafter, “the
18 Commissioner”) has reason to believe that MERCURY INSURANCE COMPANY (hereinafter
19 “Respondent”) have engaged in or is engaging in this State in the unfair methods of competition
20 or unfair or deceptive acts or practices set forth in the STATEMENT OF CHARGES contained
21 herein, each falling within Section 790 et seq. of the California Insurance Code (“CIC”);

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

24 NOW, THEREFORE, and pursuant to the provisions of CIC § 790.05, Respondent is
25 ordered to appear before the Commissioner on **September 2, 2005 at Office of Administrative**
26 **Hearings, 1515 Clay Street, Suite 206, Oakland, California, at 1:30 P.M.**, and show cause, if
27 any cause there be, why the Commissioner should not issue an Order to said Respondent
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1 requiring Respondent to Cease and Desist from engaging in the methods, acts, and practices set
2 forth in the STATEMENT OF CHARGES contained herein in Paragraphs 2 through 5 and
3 imposing the penalties set forth in CIC Sections 790.035 and 704(b) as requested in the Petition
4 for Discipline and Order, herein.

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6 **JURISDICTION AND PARTIES**

7 1. Respondent is, and at all relevant times has been, the holder of a Certificate
8 of Authority issued by the Commissioner and is authorized to transact the business of insurance in
9 California.

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11 **STATEMENT OF CHARGES**

12 2. On or about May 28, 2004, Jodie Milburn made a third-party claim with
13 Respondent for damage to her vehicle. Ms. Milburn took the vehicle to the shop of her choice.
14 That shop wrote an estimate that was greater than Respondent's. The shop's labor rate is \$ 38 per
15 hour. Respondent offered to pay only \$34 per hour. Respondent stated that their refusal to pay
16 the shop's rate was based on the belief that the shop's rates exceed the fair competitive rate for
17 the area. Respondent, however, had not conducted a labor rate survey to determine the prevailing
18 labor rate in the area nor submitted any such survey to the Department. Respondent's acts are in
19 violation of CIC Sections 758(c) and 790.03(h)(5) and Title 10, California Code of Regulation,
20 Sections 2695.7(g) and 2695.8(f) [Claim No. XX003023-86].

21 3. On or about June 22, 2004, Vernon and Sharon Honn made a third-party
22 claim with Respondent for damage to their vehicle. The Honns took the vehicle to the shop of
23 their choice. That shop wrote an estimate that was greater than Respondent's. The shop's labor
24 rate is \$ 38 per hour. Respondent offered to pay only \$34 per hour. Respondent also advised the
25 Honns that any amount over those rates would be their responsibility and, in fact, the Honns paid
26 the difference directly to the body shop. Respondent stated that their refusal to pay the shop's
27 rate was based on the belief that the shop's rates exceed the fair competitive rate for the area.
28 Respondent, however, had not conducted a labor rate survey to determine the prevailing labor rate

1 in the area nor submitted any such survey to the Department. Respondent's acts are in violation
2 of CIC Sections 758(c) and 790.03(h)(5) and Title 10, California Code of Regulation, Sections
3 2695.7(g) and 2695.8(f) [Claim No. XM004683-71].

4 4. On or about May 21, 2004, Tom and Gail Moore made a first-party claim
5 with Respondent for damage to their vehicle. The Moores took the vehicle to the shop of their
6 choice. That shop wrote an estimate that was greater than Respondent's. The shop's labor rate is
7 \$ 38 per hour. Respondent offered to pay only \$34 per hour. Respondent stated that their refusal
8 to pay the shop's rate was based on the belief that the shop's rates exceed the fair competitive rate
9 for the area. Respondent, however, had not conducted a labor rate survey to determine the
10 prevailing labor rate in the area nor submitted any such survey to the Department. Respondent's
11 acts are in violation of CIC Sections 758(c) and 790.03(h)(5) and Title 10, California Code of
12 Regulation, Sections 2695.7(g) and 2695.8(f) [Claim No. XJ003833-18].

13 5. On or about April 24, 2004, Eric Chou made a first-party claim with
14 Respondent for damage to his vehicle. Mr. Chou took the vehicle to the shop of his choice. That
15 shop wrote an estimate that was greater than Respondent's. The shop's labor rate is \$ 38 per
16 hour. Respondent offered to pay only \$34 per hour. Mr. Chou paid the difference directly to the
17 body shop. Respondent stated that their refusal to pay the shop's rate was based on the belief that
18 the shop's rates exceed the fair competitive rate for the area. Respondent, however, had not
19 conducted a labor rate survey to determine the prevailing labor rate in the area nor submitted any
20 such survey to the Department. Respondent's acts are in violation of CIC Sections 758(c) and
21 790.03(h)(5) and Title 10, California Code of Regulation, Sections 2695.7(g) and 2695.8(f)
22 [Claim No. XJ003145-47].

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24 **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**
25 **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. seq**

26 6. The facts alleged above in Paragraphs 2 through 5 show that Respondent
27 did not attempt in good faith to effectuate prompt, fair and equitable settlement of claims in which
28 liability had become reasonable clear, in violation of CIC Section 790.03(h)(5).

