

1 CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
2 Auto Compliance Bureau
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6 Insurance Commissioner

7
8 **BEFORE THE INSURANCE COMMISSIONER**
9 **OF THE STATE OF CALIFORNIA**

10
11 In the Matter of
12 INFINITY INSURANCE
13 COMPANY,
14 Respondents.

File No. UPA02025719
UPA04036949

OAH Case No.: N2005070413

**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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19 WHEREAS, the Insurance Commissioner of the State of California (hereafter, “the
20 Commissioner”) has reason to believe that INFINITY INSURANCE COMPANY (hereinafter
21 “RESPONDENT”) has engaged in or is currently engaging in the unfair methods of competition
22 or unfair or deceptive acts or practices in this State as set forth in the STATEMENT OF
23 CHARGES contained herein, each falling specifically within Section 790 et seq. of the California
24 Insurance Code (“CIC”) and related sections of the California Code of Regulations (“CCR”) or
25 other sections of the CIC;

26 WHEREAS, the Insurance Commissioner has reason to believe that a proceeding with
27 respect to the alleged acts of RESPONDENT would be in the public interest;

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1 NOW, THEREFORE, and pursuant to the provisions of CIC § 790.05, RESPONDENT
2 are ordered to appear before the Commissioner on **October 3, 2005 at Office of Administrative**
3 **Hearings, 1515 Clay Street, Suite 200, Oakland, California, at 9:00 A.M.**, and show cause, if
4 any cause there be, why the Commissioner should not issue an Order to said RESPONDENT
5 requiring RESPONDENT to Cease and Desist from engaging in the methods, acts, and practices
6 set forth in the STATEMENT OF CHARGES contained herein in Paragraphs 3 through 5 and
7 imposing the penalties set forth in CIC §§ 790.035 and 704(b) as requested in the Petition for
8 Discipline and Order, herein.

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10 **JURISDICTION AND PARTIES**

11 1. The California Department of Insurance (hereafter “Department”) brings
12 this matter before the Insurance Commissioner of the State of California (hereafter “Insurance
13 Commissioner”) pursuant to the provisions of Insurance Code §790.05.

14 2. Respondent is, and at all relevant times has been, the holder of a Certificate
15 of Authority issued by the Commissioner and is authorized to transact the business of insurance in
16 California.

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18 **STATEMENT OF CHARGES**

19 3. The Department examined claims complaint files originally reviewed and
20 closed between January 1, 2002 and April 10, 2003. The review was made to evaluate any trends
21 in the complaints and RESPONDENT’S general compliance with the CIC, the CCR, and other
22 insurance related statutes. As a result of the complaint file review, the Commissioner, in his
23 official capacity, now alleges that RESPONDENT has violated provisions of the Fair Claims
24 Settlement Practices Regulations (CCR Section 2695.1 et seq.) and CIC, as follows:

25 **SPECIFIC VIOLATIONS:**

26 a) In 3 instances, RESPONDENT, failed to properly investigate and settle a
27 claim by unduly delaying the investigations and paying the incorrect value for a total loss vehicle,
28 in violation of CIC § 790.03(h)(3) [Claim Nos. 04153123, 04703858, and 04707045];

1 b) In 1 instance, RESPONDENT mislead a claimant as to the applicable
2 statute of imitations, in violation of CIC § 790.03(h)(15) [Claim No. 94019494];

3 c) In 7 instances, RESPONDENT failed to properly document the claims file,
4 in violation of CCR § 2695.3(a) and (b) [Claim Nos. 04703425, 04805424, 94025803, 94012727,
5 04806091(2), and 4977626];

6 d) In 5 instances, RESPONDENT failed to respond within fifteen days of
7 receiving a communication from a claimant that reasonably suggested that a response was
8 expected, in violation of CCR § 2695.5(b) [Claim Nos. 92026712, 04502605, 92027834,
9 04601913, and 94021796];

10 e) In 6 instances, RESPONDENT failed to acknowledge the claim, provide
11 the necessary forms and instructions, and/or begin the necessary investigation within 15 calendar
12 days of receipt of notice of claim, in violation of CCR § 2695.5(e) [Claim Nos. 02022081 (3),
13 94012727 (2), and 04604274];

14 f) In 8 instances, RESPONDENT failed to accept or deny a claim in writing
15 within 40 days of receiving proof of the claim, in violation of CCR §§ 2695.7(b) and 2695.7(b)(1)
16 [Claim Nos. 00393742, 94822502, 04503140, 04404412, 94025072, 040996854, 04800791, and
17 04406238];

18 g) In 8 instance, RESPONDENT, when denying a claim, failed to provide the
19 insured with the address and phone number of the Department, in violation of CCR §
20 2695.7(b)(3) [Claim Nos. 04009493, 94025872, 94021796, 04072456 (4), and 04800791];

21 h) In 18 instances, RESPONDENT failed to provide written notice of the
22 need for additional time to process the claim every thirty calendar days, in violation of CCR §
23 2695.7(c)(1) [Claim Nos. 00393742, 04502605, 94822502, 04503140 (2), 04404412 (2),
24 94021617 (5), 04009214 (3) and 94021796 (3)];

25 i) In 4 instances, RESPONDENT failed to tender payment within 30 days of
26 accepting the claim, in violation of CCR § 2695.7(h) [Claim Nos. 9822502, 04503140 (2), and
27 04806091];

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1 j) In 2 instances, RESPONDENT failed to provide written notice to claimant
2 60 days before the expiration of the statute of limitations, in violations of CCR § 2695.7(f) [Claim
3 Nos. 94019494 and 04009214];

4 k) In 3 instances, RESPONDENT failed to provided status letters to
5 complainant regarding suspected fraudulent claims, in violation of CCR § 2695.7(k) [CLAIM No.
6 04033847 93)];

7 l) In 4 instances, in adjusting and settling 1st party automobile total loss
8 claims, RESPONDENT failed to fully itemize and explain the basis for the cost of the
9 comparable vehicle in writing and/or failed to specify the basis for a reduction in the actual cash
10 value of the vehicle, in violation of CCR § 2695.8(b) [Claim Nos. 04703425 (2), 94021617, and
11 94012727];

12 m) In 1 instance, RESPONDENT directed its insured to have their vehicle
13 repaired at a specific auto body repair shop, in violation of CCR § 2695.8(e)(2) [Claim No.
14 94012727];

15 4. On or about October 27, 2003, Angel Alatrisme made a first-party claim
16 with Respondent for damage to his vehicle. Mr. Alatrisme took the vehicle to the shop of his
17 choice. The shop's labor rate is \$36 per hour for sheet metal repair, \$65 for mechanical repair,
18 and \$55 per hour for frame work. Respondent offered to pay only \$34 per hour for sheet metal
19 repair and \$45 per hour for frame work. Respondent also advised Mr. Alatrisme that any amount
20 over those rates would be his responsibility. Respondent stated that their refusal to pay the shop's
21 rate was based on the belief that the shop's rates exceed the fair competitive rate for the area.
22 Respondent, however, had not conducted a labor rate survey to determine the prevailing labor rate
23 in the area nor submitted any such survey to the Department. Respondent's acts are in violation
24 of CIC §§ 758(c) and 790.03(h)(5) and CCR §§ 2695.7(g) and 2695.8(f) [Claim No. 02030475].

25 5. In one instance, RESPONDENT failed to timely provide the insured with
26 the Auto Body Repair Consumer Bill of Rights, in violation of CIC § 1874.87 [Claim No.
27 04707045].

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1 **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**
2 **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. Seq**

3 6. The facts alleged above in paragraphs 3 through 5 show that Respondent
4 did not adopt and implement reasonable standards for the prompt investigation and processing of
5 claims, in violation of Section 790.03(h)(3) of the California Insurance Code.

6 7. The facts alleged above in paragraphs 3 through 5 show that Respondent
7 did not attempt in good faith to effectuate prompt, fair and equitable settlement of claims in which
8 liability had become reasonable clear, in violation of Section 790.03(h)(5) of the California
9 Insurance Code.

10 8. The facts alleged above in Paragraphs 3 through 5 constitute grounds,
11 under Section 790.05 of the Insurance Code, for the Insurance Commissioner to order Respondent
12 to cease and desist from engaging in such unfair acts or practices and to pay a civil penalty not to
13 exceed five thousand dollars (\$5,000) for each act, or if the act or practice was willful, a civil
14 penalty not to exceed ten thousand dollars (\$10,000) for each act as set forth under Section
15 790.035 of the Insurance Code.

16 9. The facts alleged above in Paragraphs 3 through 5 show that Respondent
17 has failed to carry out its contracts in good faith, constituting grounds for the Insurance
18 Commissioner to suspend the Certificate of Authority of Respondent for a period not to exceed
19 one year pursuant to Section 704(b) of the Insurance Code, or to impose a fine in an amount not
20 exceeding \$55,000 in lieu of suspension pursuant to the authority of Section 704.7 of the
21 Insurance Code.

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23 **PETITION FOR DISCIPLINE AND ORDER**

24 **WHEREFORE**, Petitioner prays for judgment against Respondent as follows:

25 1. An Order to Cease and Desist from engaging in such unfair acts or practices in
26 violation of Section 790.03 of the Insurance Code as set forth above;

27 2. For acts in violation of Insurance Code Section 790.03 and the regulations
28 promulgated pursuant to Section 790.10 of the Insurance Code, as set forth above, a civil penalty

1 not to exceed five thousand dollars (\$5,000) for each act or, if the act or practice was willful, a
2 civil penalty not to exceed ten thousand dollars (\$10,000) for each act.

3 3. For acts in violation of Section 704(b) of the California Insurance Code,
4 suspension of Respondent's Certificate of Authority for not exceeding one year or a fine in the
5 amount fifty-five thousand dollars (\$55,000) in lieu of suspension.

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8 Dated: July 12, 2005_

JOHN GARAMENDI
Insurance Commissioner

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By _____ /s/_____
Teresa R. Campbell
Staff Counsel

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