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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 the Licenses and Licensing  
Rights of

12 **PHILADELPHIA INDEMNITY**  
13 **INSURANCE COMPANY**

14 Respondent.

File No. UPA 06091704

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

15  
16 **ORDER TO SHOW CAUSE**

17  
18 WHEREAS, the Insurance Commissioner of the State of California (hereafter, "The  
19 Commissioner") has reason to believe that Respondent PHILADELPHIA INDEMNITY  
20 INSURANCE COMPANY, hereinafter referred to as "Respondent" and/or "PIIC" has engaged in  
21 or is engaging in this State in the unfair methods of competition or unfair or deceptive acts or  
22 practices, and other unlawful acts, as set forth in the STATEMENT OF  
23 CHARGES/ACCUSATION contained herein; and

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

26 NOW, THEREFORE, and pursuant to the provisions of Section 790.05 of the California  
27 Insurance Code, Respondent is ordered to appear before the Commissioner on a date to be set at  
28 the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, CA 94612 and

1 show cause, if any cause there be, why the Commissioner should not issue an Order to  
2 Respondent requiring Respondent to Cease and Desist from engaging in the methods, acts, and  
3 practices set forth in the SPECIFIC FACTUAL ALLEGATIONS contained in Paragraphs 6 and 7  
4 and imposing the penalties set forth in Section 790.035 of the Insurance Code and requested  
5 herein.

### 6 GENERAL STATEMENT

7 1. From January 27, 1993 to the present Respondent PIIC has been the holder of a  
8 Certificate of Authority (Certificate Number 3576-6) issued by the Commissioner to act in the  
9 capacity of a Property and Casualty Insurer.

10 2. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, Sections 730,  
11 733, 736 and Article 6.5, Section 790.04 of the California Insurance Code and Title 10, Chapter  
12 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, the Commissioner  
13 made an examination of the Respondent's claims practices and procedures in California. The first  
14 examination covered Respondent's claims handling practices during the period June 1, 2000  
15 through May 31, 2001. ("The 2001 examination"). The 2001 examination was made to discover,  
16 in general, if these and Respondent's other operating procedures conform with the contractual  
17 obligations in the insurance policy forms, to provisions of the California Insurance Code ("CIC"),  
18 the California Code of Regulations ("CCR"), other insurance related statutes, and case law. The  
19 2001 examination included:

- 20 a) A review of the guidelines, procedures, training plans and forms adopted  
21 by the Respondent for use in California, including any documentation maintained by the  
22 Respondent in support of positions or interpretations of fair claims settlement practices;
- 23 b) A review of the application of such guidelines, procedures and forms, by  
24 means of an examination of claims files and related records; and
- 25 c) A review of consumer complaints received by the California Department of  
26 Insurance in the most recent year prior to the 2001 Examination.

27 3. The 2001 Examination was conducted at Respondent's claims office in Bala  
28 Cynwyd, Pennsylvania. The examiners reviewed a total of two hundred and ten (210) claim files.

1 The review identified eighty-three (83) claims handling violations, all under CIC Section 790.03  
2 and the Fair Claims Settlement Practices found in CCR, Title 10, Chapter 5, Subchapter 7.5,  
3 Sections 2695.3 through 2695.8 (adopted pursuant to CIC Section 790.034). The review also  
4 identified thirty-eight claims handling violations of the California Insurance code and California  
5 Vehicle code. The pattern and frequency of the violations indicate a general business practice.

6 4. Under the authority granted pursuant to Part 2, Chapter 1, Article 4, Sections 730,  
7 733, 736 and Article 6.5, Section 790.04 of the California Insurance Code and Title 10, Chapter  
8 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, the Commissioner  
9 made a subsequent examination of the Respondent's claims practices and procedures in  
10 California. The second examination covered Respondent's claims handling practices during the  
11 period July 1, 2003 through June 30, 2004. ("The 2004 examination"). The 2004 examination  
12 was made to discover, in general, if these and Respondent's other operating procedures conform  
13 with the contractual obligations in the insurance policy forms, to provisions of the CIC, the CCR,  
14 other insurance related statutes, and case law. The 2004 examination included:

- 15 a) A review of the guidelines, procedures, training plans and forms adopted  
16 by the Respondent for use in California, including any documentation maintained by the  
17 Respondent in support of positions or interpretations of fair claims settlement practices;
- 18 b) A review of the application of such guidelines, procedures and forms, by  
19 means of an examination of claims files and related records; and
- 20 c) A review of consumer complaints received by the California Department of  
21 Insurance in the most recent year prior to the 2004 Examination.

22 5. The 2004 Examination was conducted at Respondent's claims office in Bala  
23 Cynwyd, Pennsylvania and at a field office in Mission Viejo, California. The examiners  
24 reviewed a total of two hundred and thirty-nine (239) claim files. The review identified twenty-  
25 eight (28) claims handling violations, all under CIC Section 790.03 and the Fair Claims  
26 Settlement Practices found in CCR, Title 10, Chapter 5, Subchapter 7.5, Sections 2695.3 through  
27 2695.8 (adopted pursuant to CIC Section 790.034). The review also identified one hundred and  
28 sixty (160) claims handling violations of the California Insurance code and California Vehicle

1 code. The pattern and frequency of the violations indicate a general business practice.

2  
3 **STATEMENT OF SPECIFIC CHARGES**

4 6. As a result of the 2001 Examination filed with the Department, the Commissioner,  
5 in his official capacity, now alleges that Respondent PIIC has violated provisions of the Unfair  
6 Practices Act (CIC § 790.03(h) and other provisions of the Insurance Code, and the Fair Claims  
7 Settlement Practices Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.) as follows:

8 a) In twenty-three instances PIIC's claim files failed to contain all documents,  
9 notes and work papers that pertain to the claim in violation of CCR section  
10 2695.3(a). (Claim nos. PHNP01040064171, PHVS01020061979, PHVS010303063608,  
11 PHNP01030062394, PHNP01010060323, PHVS99120045783, PHNP00080054342,  
12 PHNP00080054459, PHNP00080054840, PHRP00100057306, PHNP00100056515,  
13 PHNP00110058266, PHLP00110058330, PHNP00060051965, PHRP00090055466,  
14 PHNP00120059639, PHVS00100057025, PHRT01010060875, PHGO01040064496,  
15 PHNP00040050345, PHNP00110057664, PHNP01020061961, and PHNP00020048164).

16 b) In fourteen instances PIIC failed to disclose all benefits, coverage, time  
17 limits or other provisions of the insurance policy in violation of CCR section 2695.4(a).  
18 (Claim nos. PHNP01010059853, PHNP01020061612, PHNP00120058479,  
19 PHVS01020061979, PHVS010303063608, PHNP00020048394, PHNP00050051008,  
20 PHNP00080054946, PHNP00080055094, PHNP00090055946, PHRP00100057306,  
21 PHRP00110058247, PHVS00110058235, and PHNP00020048164).

22 c) In thirteen instances PIIC failed to maintain hard copy claim files or  
23 maintain claim files that are accessible, legible and capable of duplication to hard copy for  
24 five years in violation of CCR section 2695.3(b)(3). (Claim nos. PHNP00110058503,  
25 PHNP01020062058, PHNP0060052558, PHNP00040050355, PHNP00050051427,  
26 PHNP00120058810, PHNP01020061992, PHSL00060051987, PHSL00100057124,  
27 PHPU0060052202, PHCO00110058254, PHCO01050065389, and PHCO9909042206).

1           d)       In seven instances PIIC failed to provide written notification to a first party  
2 claimant as to whether the insurer intends to pursue subrogation in violation of CCR  
3 section 2695.8(i). (Claim nos. PHVS00070052939, PHNP01010060323,  
4 PHNP01030062394, PHNP00060052402, PHNP00080054459, PHNP00080054946, and  
5 PHRT00110058090)

6           e)       In six instances PIIC failed to include a statement in their claim denial that,  
7 if the claimant believes the claim has been wrongfully denied or rejected, he or she may  
8 have the matter reviewed by the California Department of Insurance in violation of CCR  
9 section 2695.7(b)(3). (Claim nos. PHNP00110057564, PHTR00110058164,  
10 PHNP00050051578, PHNP00050051724, PHBS00050050957, and PHCO99070040997).

11           f)       In five instances PIIC, upon acceptance of the claim, failed to tender  
12 payment within 30 days in violation of CCR section 2695.7(h). (Claim nos.  
13 PHNP00050051008, PHNP00080054459, PHNP0011058396, PHSL00040049982, and  
14 PHDY0030049172).

15           g)       In two instances PIIC failed to supply the claimant with a copy of the  
16 estimate upon which the settlement was based in violation of CCR section 2695.8(f).  
17 (Claim nos. PHNP00080054946 and PHNP00080055094).

18           h)       In two instances, PIIC failed to provide written notice of the need for  
19 additional time every 30 calendar days in violation of CCR section 2695.7(c)(1). (Claim  
20 nos. PHNP99100043646 and PHCO99070040997).

21           i)       In two instances PIIC failed to document the basis of betterment,  
22 depreciation or salvage in violation of CCR section 2695.8(k). The basis for any  
23 adjustment shall be fully explained to the claimant in writing. (Claim nos.  
24 PHRT00120059560 and PHRT01010060875).

25           j)       In two instances PIIC failed to record in the file the date the company  
26 received, date the company processed and the date the Company transmitted, or mailed  
27 every relevant document in the file in violation of CCR section 2695.3(b)(2). (Claim nos.  
28 PHNP00020048164 and PHNP00110058040).

1 k) In two instances PIIC attempted to settle a claim by making a settlement  
2 offer that was unreasonably low in violation of CCR section 2695.7(g). (Claim nos.  
3 PHNP99100043651 and PHNP00090056002).

4 l) In two instances PIIC failed to maintain a copy of the certification required  
5 by CCR section 2695.6(b)(1), (2) or (3) at the principal place of business in violation of  
6 CCR section 2695.6(b)(4).

7 m) In one instance PIIC failed, upon receiving proof of a claim, to accept or  
8 deny the claim within 40 calendar days in violation of CCR section 2695.7(b). (Claim no.  
9 PHCO99070040997).

10 n) In one instance PIIC failed to provide written notice of any statute of  
11 limitation or other time period requirement no less than 60 days prior to the expiration  
12 date in violation of CCR section 2695.7(f). (Claim no. PHNP00050051578).

13 o) In one instance PIIC failed to explain in writing for the claimant the basis  
14 of the fully itemized cost of the comparable automobile in violation of CCR section  
15 2695.8(b)(1). (Claim no. PHNP01020061283).

16 p) In fifteen instances PIIC failed to provide the insured with the Auto Body  
17 Repair Consumer Bill of Rights in violation of CIC section 1874.87. (Claim nos.  
18 PHNP01010060588, PHNP01020061612, PHNP010400664155, PHNP01040064171,  
19 PHNP01040063896, PHNP01040064796, PHNP01030062308, PHNP01050065589,  
20 PHVS01010060177, PHVS01010060534, PHVS010120061979, PHVS010303063608,  
21 PHNP01030062394, PHNP01010060323, and PHNP01020061283).

22 q) In seven instances PIIC failed to include the California fraud warning on  
23 insurance forms in violation of CIC section 1879.2(a). (Claim nos. PHNP01010060588,  
24 PHNP01030062394, PHNP01020061283, PHLP00110058330, PHNP00040050462,  
25 PHPU00060052658, and PHNP01010060000).

26 r) In six instances PIIC failed to include the California fraud warning on  
27 insurance forms in violation of CIC section 1871.2. (Claim nos. PHVS00100057025,  
28 PHRT01010060875, PHNP00070053856, PHNP00090056002, PHNP00110057664, and

1 PHNP00070053856).

2 s) In four instances PIIC failed to secure from the insured a proper claim form  
3 in violation of CIC 1871.3(a). (Claim nos. PHLP00110058330, PHNP00040050462,  
4 PHNP00060051965, and PHRP00090055466).

5 t) In four instances PIIC failed to notify the Department of Motor Vehicles  
6 that the owner of a total loss salvage vehicle retained possession of the vehicle or QBE  
7 failed to notify the insured or owner of his or her responsibility to comply with CVC  
8 section 11515(b) in violation of CVC section 11515(b). (Claim nos. PHNP00110058153 –  
9 two violations and PHRT01010060875 – two violations).

10 u) In one instance PIIC QBE failed to pay the claim within 10 days of the  
11 receipt of an itemized bill or invoice covering repairs authorized by the insurer which  
12 have been satisfactorily completed in violation of CIC section 560. (Claim no.  
13 PHNP01020061659).

14 v) In one instance PIIC failed to use the correct company name in  
15 correspondence in violation of CIC section 880. (Claim no. PHUC99120046069).

16 7. As a result of the 2004 Examination filed with the Department, the Commissioner,  
17 in his official capacity, now alleges that Respondent PIIC has violated provisions of the Unfair  
18 Practices Act (CIC § 790.03(h) and other provisions of the Insurance Code, and the Fair Claims  
19 Settlement Practices Regulations (CCR, Title 10, Chapter 5, Section 2695.1 et seq.) as follows:

20 a) In thirteen instances PIIC failed to explain in writing for the claimant the  
21 basis of the fully itemized cost of the comparable automobile. PIIC failed to include, in  
22 the settlement, all applicable taxes, license fees and other fees incident to transfer of  
23 evidence of ownership of the comparable automobile in violation of CCR section  
24 2695.8(b)(1), (Claim nos. 03120125283 – two violations, 0340106864 – two violations,  
25 03070112511 – two violations, 3090119803 – two violations, 2010077231 - two  
26 violations, 3090119534 - two violations, and 4020131435).

27 b) In three instances PIIC failed to include a statement in its claim denial that,  
28 if the claimant believes the claim has been wrongfully denied or rejected, he or she may

1 have the matter reviewed by the California Department of Insurance in violation of CCR  
2 section 2695.7(b)(3). (Claim nos. 3010101036, 04030133050, and 03100120681).

3 c) In three instances PIIC attempted to settle a claim by making a settlement  
4 offer that was unreasonably low in violation of CCR section 2695.7(g). (Claim nos.  
5 3070112783, 3070112783, and 04020132981).

6 d) In three instances PIIC failed to document the determination of value in  
7 violation of CCR section 2695.8(b)(1)(C). Any deductions from value, including  
8 deduction for salvage, must be discernible, measurable, itemized and specified as well as  
9 be appropriate in dollar amount. (Claim nos. 03120125283, 3090119534, and  
10 0340106864).

11 e) In one instance PIIC's claim file failed to contain all documents, notes and  
12 work papers that pertain to the claim in violation of CCR section 2695.3(a). (Claim no.  
13 3070112657).

14 f) In one instance PIIC failed to respond to communications within 15  
15 calendar days in violation of CCR section 2695.5(b). (Claim no. 3010100036).

16 g) In one instance PIIC failed to provide written notice of any statute of  
17 limitation or other time period requirement no less than 60 days prior to the expiration  
18 date in violation of CCR section 2695.7(f). (Claim no. 03060111494).

19 h) In one instance PIIC failed to document the basis of betterment,  
20 depreciation or salvage in violation of CCR section 2695.8(k). The basis for any  
21 adjustment shall be fully explained to the claimant in writing. (Claim no. 3070112783).

22 i) In one instance PIIC failed to supply the claimant with a copy of the  
23 estimate upon which the settlement was based in violation of CCR section 2695.8(f).  
24 (Claim no. 3060112206).

25 j) In one instance PIIC failed to adopt and implement reasonable standards  
26 for the prompt investigation and processing of claims arising under its insurance policies  
27 in violation of CIC section 790.03(h)(3). (Claim no. 03060110384).

28

1 k) In one hundred and fifty-two instances PIIC failed to provide the insured  
2 with the Auto Body Repair Consumer Bill of Rights in violation of CIC section 1874.87.  
3 (Claim nos. 3010101036, 30700112657, 3010100036, 02060087142, 0209002253,  
4 03060111494, 03060111169, 03060111119, 03080115295, 03000008925, 02050084645,  
5 02060087142, 03020101463, 020700897295, 03040106267, 02120098162, 03020102398,  
6 03060110408, 02060086648, 01070068112, 03030105428, 03120127530, 03070114764,  
7 0212097431, 03050109645, 03030104983, 03020102656, 02100093873, 03040107327,  
8 03030103716, 03070113880, 02080090057, 030900119921, 04030136031, 03090119816,  
9 3060112206, 3070112783, 3070112783, 04020132981, 03120126490, 03060110384,  
10 03030108756, 03060112363, 02080089727, 03050109359, 03090119738, 04020130938,  
11 02100093939, 03040106465, 01080070091, 03070112589, 03060111512, 04020132113,  
12 03110123784, 03090119703, 03040106267, 02090091951, 03070112944, 03060112186,  
13 03080116565, 03100120214, 0310012239, 0310012094, 0406143509, 0306012072,  
14 03070114503, 03070115131, 03080114503, 03090118858, 0306111351, 0301010000,  
15 0308115692, 02040083329, 03120127270, 03050108700, 03080115243, 03120127467,  
16 03070113347, 03060111581, 04010128686, 0120126123, 03090119816, 03060111651,  
17 0210098091, 02120097930, 03070053774, 03090118323, 03080116901, 04010129257,  
18 03040106681, 03070112896, 03060110231, 03090117650, 03100120811, 03070112511,  
19 3090119803, 2010077231, 3090119534, 4050140835, 3050108701, 3090120003,  
20 4010128842, 2070087703, 4050138849, 3080115907, 3070114805, 3020101733,  
21 4040136255, 3100121630, 3020102167, 4020132987, 3070113951, 2070087295,  
22 3080117267, 3080116391, 1120076365, 3090117889, 3100121216, 4020132076,  
23 4020132006, 3120126154, 3070114763, 3070114144, 3100121250, 3120125826,  
24 3110123161, 3060110749, 3120126276, 3100120215, 4020132531, 3110123305,  
25 4040138122, 2090092403, 2120098333, 4010130044, 4030135415, 4030135904,  
26 4060141656, 4040137850, 4060142878, 3070113762, 4040137262, 4020131435,  
27 3070113480, 401012940, 3090119057, 3030105290, 2100093016, 3080116375,  
28 3090117270, 3060110136, and 4020130897).

1           l)       In four instances PIIC failed to notify the Department of Motor Vehicles  
2 that the owner of a total loss salvage vehicle retained possession of the vehicle in violation  
3 of CVC section 11515.2(b). (Claim nos. 3070112782, 03120125283, 04020132981, and  
4 3090119534).

5           m)       In four instances PIIL failed to notify the insured or owner of his or her  
6 responsibility to comply with CVC section 11515(b) in violation of CVC section  
7 11515(b). (Claim nos. 3070112783, 03120125283, 04020132981, and 3090119534).

8  
9           **STATEMENT OF MONETARY PENALTY ORDER, AND STATEMENT OF**  
10           **POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et. seq**

11           8.       The facts alleged above in paragraphs 6 and 7 show that Respondent did not  
12 attempt in good faith to effectuate prompt, fair and equitable settlement of claims in which  
13 liability had become reasonable clear, in violation of CIC Section 790.03(h)(5).

14           9.       The facts alleged above in paragraphs 6 and 7 constitute grounds, under CIC  
15 Section 790.05, for the Insurance Commissioner to order Respondent to cease and desist from  
16 engaging in such unfair acts or practices and to pay a civil penalty not to exceed five thousand  
17 dollars (\$5,000) for each act, or if the act or practice was willful, a civil penalty not to exceed ten  
18 thousand dollars (\$10,000) for each act as set forth under CIC Section 790.035.

19           10.      The facts alleged above in paragraphs 6 and 7 show that Respondent has failed to  
20 carry out its contracts in good faith, constituting grounds for the Insurance Commissioner to  
21 suspend the Certificate of Authority of Respondent for a period not to exceed one year pursuant  
22 to CIC Section 704(b), or to impose a fine in an amount not exceeding \$55,000 in lieu of  
23 suspension pursuant to the authority of CIC Section 704.7.

24           **REQUEST FOR ORDER AND MONETARY PENALTY**

25           11.      WHEREFORE, Petitioner prays for judgment against Respondent as follows:

26           a)       An Order to Cease and Desist from engaging in such unfair acts or  
27 practices in violation of CIC Section 790.03(h) and the regulations promulgated pursuant  
28 to CIC Section 790.10 as set forth above;

          b)       Pursuant to CIC Section 790.035, for willful acts in violation of CIC

