

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

11 **BEFORE THE INSURANCE COMMISSIONER**
12 **OF THE STATE OF CALIFORNIA**

13 In the Matter of
14 INFINITY INSURANCE
15 COMPANIES (NAIC GROUP #
16 3495),
17 RESPONDENT.

18 File No. UPA 02025719
19 UPA 04036949
20 UPA 2006-00006

21 OAH Case No.: N2005070413

22 **SECOND AMENDED ORDER TO SHOW**
23 **CAUSE AND STATEMENT OF**
24 **CHARGES; NOTICE OF MONETARY**
25 **PENALTY**

26 (Insurance Code §§704(b), 790.05 and
27 790.035)

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

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

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2 NOW, THEREFORE, and pursuant to the provisions of CIC § 790.05, RESPONDENT
3 are ordered to appear before the Commissioner on **May 31, 2007 and June 1, 2007 at Office of**
4 **Administrative Hearings, 1515 Clay Street, Suite 200, Oakland, California, at 9:00 A.M.,**
5 and show cause, if any cause there be, why the Commissioner should not issue an Order to said
6 RESPONDENT requiring RESPONDENT to Cease and Desist from engaging in the methods,
7 acts, and practices set forth in the STATEMENT OF CHARGES contained herein in Paragraphs
8 3 through 5 and imposing the penalties set forth in CIC §§ 790.035 and 704(b) as requested in the
9 Petition for Discipline and Order, herein.

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11 **JURISDICTION AND PARTIES**

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

15 2. RESPONDENT is, and at all relevant times has been, the holder of a
16 Certificate of Authority issued by the Commissioner and is authorized to transact the business of
17 insurance in California. The individual companies that are the subject of this action are Infinity
18 Insurance Company, Infinity Select Insurance Company, Infinity National Insurance Company,
19 Atlanta Casualty Company, Atlanta Specialty Company, and Leader Insurance Company. Each
20 of these companies is a member of the Infinity Insurance Companies group.

21
22 **STATEMENT OF CHARGES**

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

1 SPECIFIC VIOLATIONS:

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

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

7 c) In 7 instances, RESPONDENT failed to properly document the claims file,
8 in violation of CCR § 2695.3(a) and (b) [Claim Nos. 04703425, 04805424, 94025803, 94012727,
9 04806091(2), and 4977626];

10 d) In 5 instances, RESPONDENT failed to respond within fifteen days of
11 receiving a communication from a claimant that reasonably suggested that a response was
12 expected, in violation of CCR § 2695.5(b) [Claim Nos. 92026712, 04502605, 92027834,
13 04601913, and 94021796];

14 e) In 6 instances, RESPONDENT failed to acknowledge the claim, provide
15 the necessary forms and instructions, and/or begin the necessary investigation within 15 calendar
16 days of receipt of notice of claim, in violation of CCR § 2695.5(e) [Claim Nos. 02022081 (3),
17 94012727 (2), and 04604274];

18 f) In 8 instances, RESPONDENT failed to accept or deny a claim in writing
19 within 40 days of receiving proof of the claim, in violation of CCR §§ 2695.7(b) and 2695.7(b)(1)
20 [Claim Nos. 00393742, 94822502, 04503140, 04404412, 94025072, 040996854, 04800791, and
21 04406238];

22 g) In 8 instance, RESPONDENT, when denying a claim, failed to provide the
23 insured with the address and phone number of the Department, in violation of CCR §
24 2695.7(b)(3) [Claim Nos. 04009493, 94025872, 94021796, 04072456 (4), and 04800791];

25 h) In 18 instances, RESPONDENT failed to provide written notice of the
26 need for additional time to process the claim every thirty calendar days, in violation of CCR §
27 2695.7(c)(1) [Claim Nos. 00393742, 04502605, 94822502, 04503140 (2), 04404412 (2),
28 94021617 (5), 04009214 (3) and 94021796 (3)];

1 i) In 4 instances, RESPONDENT failed to tender payment within 30 days of
2 accepting the claim, in violation of CCR § 2695.7(h) [Claim Nos. 9822502, 04503140 (2), and
3 04806091];

4 j) In 2 instances, RESPONDENT failed to provide written notice to claimant
5 60 days before the expiration of the statute of limitations, in violations of CCR § 2695.7(f) [Claim
6 Nos. 94019494 and 04009214];

7 k) In 3 instances, RESPONDENT failed to provided status letters to
8 complainant regarding suspected fraudulent claims, in violation of CCR § 2695.7(k) [CLAIM No.
9 04033847 93)];

10 l) In 4 instances, in adjusting and settling 1st party automobile total loss
11 claims, RESPONDENT failed to fully itemize and explain the basis for the cost of the
12 comparable vehicle in writing and/or failed to specify the basis for a reduction in the actual cash
13 value of the vehicle, in violation of CCR § 2695.8(b) [Claim Nos. 04703425 (2), 94021617, and
14 94012727];

15 m) In 1 instance, RESPONDENT directed its insured to have their vehicle
16 repaired at a specific auto body repair shop, in violation of CCR § 2695.8(e)(2) [Claim No.
17 94012727];

18 n) In one instance, RESPONDENT failed to timely provide the insured with
19 the Auto Body Repair Consumer Bill of Rights, in violation of CIC § 1874.87 [Claim No.
20 04707045].

21 4. On or about October 27, 2003, Angel Alatrisme made a first-party claim
22 with RESPONDENT for damage to his vehicle. Mr. Alatrisme took the vehicle to the shop of his
23 choice. The shop's labor rate is \$36 per hour for sheet metal repair, \$65 for mechanical repair,
24 and \$55 per hour for frame work. RESPONDENT offered to pay only \$34 per hour for sheet
25 metal repair and \$45 per hour for frame work. RESPONDENT also advised Mr. Alatrisme that
26 any amount over those rates would be his responsibility. RESPONDENT stated that their refusal
27 to pay the shop's rate was based on the belief that the shop's rates exceed the fair competitive rate
28 for the area. RESPONDENT, however, had not conducted a labor rate survey to determine the

1 prevailing labor rate in the area nor submitted any such survey to the Department.

2 RESPONDENT'S acts are in violation of CIC §§ 758(c) and 790.03(h)(5) and CCR §§ 2695.7(g)
3 and 2695.8(f) [Claim No. 02030475].

4 5. In 8 instances, Respondent's repair estimates limit the amount paid for
5 paint and materials to \$300 or \$350 on estimates requiring as much as 25 hours of paint labor.
6 This amount is arbitrary and unrelated to the actual cost of paint and materials or the accepted
7 industry methodology used in determining the cost of paint and materials. Respondent has
8 provided no evidence that the limit imposed is reasonable. Respondent's acts are in violation of
9 CIC Section 790.03(h)(5) and CCR, Sections 2695.7(g) and 2695.8(f) [Claim Nos. 10000197417,
10 70120786, 70028263, 10000045741, 70136844, 10000033230, and 70130281]

11 6. On or about September 30, 2004, a third-party made a claim with
12 Respondent for damage to her vehicle. The insured took the vehicle to the shop of her choice.
13 That shop wrote an estimate that was greater than Respondent's. The shop's labor rate is \$46 per
14 hour. Respondent offered to pay only \$40 per hour. Respondent stated that their refusal to pay
15 the shop's rate was based on the belief that the shop's rates exceed the generally accepted labor
16 rates for the area. Respondent, however, had not conducted a labor rate survey to determine the
17 prevailing labor rate in the area nor provided any other evidence or support that its adjustment of
18 the repair facilities estimate was reasonable. Additionally, Respondent contacted the claimant by
19 telephone and advised her that there was a difference between its estimate and the repair facility's
20 estimate and that she would be responsible to pay the difference out of her pocket. The
21 Respondent, however, failed to advise the claimant of its disputed liability and denial of part of
22 her claim in writing. Respondent's acts are in violation of CCR Sections 2695.7(b)(1). [Claim
23 No. 70040699-001]

24 7. On or about May 10, 2006, Respondent advised an insured that there was a
25 difference between the labor rate charged by the auto body repair facility and the rate it would
26 pay based on its labor rate survey, but it would pay to have the insured's vehicle moved to
27 another repair facility that would accept their rate. The insured, however, had not previously
28 requested a referral to another repair facility. Respondent's acts are in violation of CIC section

1 758.5(c). [Claim No. 10000180210]

2 8. Under the authority granted pursuant to Part 2, Chapter 1, Article 4,
3 Sections 730, 733, 736 and Article 6.5, Section 790.04 of the CIC and Title 10, Chapter 5,
4 Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations (“CCR”), the
5 Commissioner made an examination of RESPONDENT’S claims practices and procedures in
6 California. The examination covered RESPONDENT’S claims handling practices during the
7 period August 1, 2004 to July 31, 2005. The examination was made to evaluate, in general,
8 RESPONDENT’S compliance with the contractual obligations in its insurance policy forms, its
9 own procedures, the provisions of the CIC, the CCR, other insurance related statutes, and case
10 law. The Examination was primarily conducted at RESPONDENT’S office in Rancho Cordova,
11 California. The Department examined 548 total claims files¹. As a result of the examination, the
12 Department identified 561 claims handling violations of the CIC and CVC. The pattern and
13 frequency of the violations indicate a general business practice.

14 As a result of the Examination, the Commissioner, in his official capacity, now
15 alleges that RESPONDENT has violated provisions of the Fair Claims Settlement Practices
16 Regulations (CCR Section 2695.1 et seq.), other sections of the CCR, CIC, and CVC as
17 follows:

18 SPECIFIC VIOLATIONS:

19 a) In 23 instances, RESPONDENT failed to properly advise the insured that
20 the driver of the insured vehicle was principally at fault for the accident. Specifically,
21 RESPONDENT either failed to send the determination of fault letter or sent the letter, but failed
22 to specify that basis for the determination of fault, in violation of CCR § 2632.13(e)(2).

23 b) In 18 instances, RESPONDENT failed to notify the Department of Motor
24 Vehicles that the owner of a total loss salvage vehicle retained possession of the vehicle or notify
25 the insured or owner of his/her responsibility to contact DMV and obtain a salvage certificate, in
26 violation of CVC § 11515(b).

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28 ¹ The breakdown of the total number of claims files reviewed by company is as follows: 350 Infinity Insurance
Company, 13 Infinity Select Insurance Company, 22 Infinity National Insurance Company, 7 Atlanta Casualty
Company, 5 Atlanta Specialty Company, and 151 Leader Insurance Company.

1 c) In 10 instances, RESPONDENT failed to ask whether a child passenger
2 restraint system was in use at the time of the accident, in violation CIC § 11580.011.

3 d) In 10 instances, RESPONDENT failed pay for the replacement of a child
4 passenger restraint system in use at the time of the accident, in violation CIC § 11580.011.

5 e) In 3 instances, RESPONDENT failed to obtain a theft affidavit from the
6 insured before settlement of the claim, in violation of CIC § 1871.3(a).

7 f) In 2 instances, RESPONDENT failed to retain a copy of the police report
8 of the vehicle theft for 3 years, in violation of CIC § 1871.3(d)(3).

9 g) In 2 instances, RESPONDENT failed to report automobile thefts and
10 salvage total losses to the National Automobile Theft Bureau or a similar central organization
11 engaged in automobile loss prevention, in violation of CIC § 1874.6.

12 h) In 1 instance, RESPONDENT failed to properly instruct the insured
13 regarding signing the theft affidavit, in violation of CIC § 1871.3(b).

14 i) In 1 instance, RESPONDENT failed to report a claim that appeared
15 fraudulent to the Bureau of Fraudulent Claims, in violation of CIC § 1872.4(a).

16 j) In 34 instances, RESPONDENT failed to conduct business in its own
17 name, in violation of CIC § 880.

18 k) As a general business practice, RESPONDENT failed to include the
19 California fraud warning language on specific insurance forms, in violation so CIC § 1879.2(a).

20 l) As a general business practice, RESPONDENT failed to included a
21 warning on its theft affidavit advising that false representations are subject to penalty as perjury,
22 in violation of CIC § 1871.3(a)(1).

23 m) In 61 instances, RESPONDENT failed to effectuate prompt, fair and
24 equitable settlements of claims in which liability has become reasonably clear, in violation of CIC
25 § 790.03(h)(5). Examples of such violations include unreasonably limiting the cost of paint and
26 materials in the adjustment of their first-party claims for vehicle damage and failing to follow
27 their stated procedure for determining these costs. RESPONDENT failed to pay or underpaid
28 storage and tow fees. Additionally, in some cases, RESPONDENT failed to effectuate the

1 Medical Payment and Collision Deductible Waiver portion of their policies. Further,
2 RESPONDENT failed to equitably determine the actual cash value of some total loss vehicles by
3 changing the odometer to indicate higher miles, resulting in a lower settlement amount.

4 n) In 55 instances, RESPONDENT failed to adopt and implement reasonable
5 standards for the prompt investigation and processing of claims, in violation of CIC §
6 790.03(h)(3). Examples of such violations include, unreasonable delays in conducting vehicle
7 inspections, delays in determining the uninsured status of claimants, and delays in evaluating
8 medical bills before effecting bodily injury claims.

9 o) In 36 instances, RESPONDENT failed to supply the claimant with a copy
10 of the estimate upon which the settlement was based., in violation of CCR § 2695.8(f).

11 p) In 33 instances, RESPONDENT failed to provide written notice of the
12 need for additional time to process the claim, in violation of CCR § 2695.7(c)(1).

13 q) In 31 instances, RESPONDENT failed, upon receiving proof of claim, to
14 accept or deny the claim within 40 calendar days, in violation of CCR § 2695.7(b).

15 r) In 26 instances, RESPONDENT failed to provide necessary forms,
16 instructions and reasonable assistance within 15 calendar days of receipt of the claim, in violation
17 of CCR § 2695.5(e)(2).

18 s) In 26 instances, RESPONDENT failed to maintain all documents, notes,
19 and work papers in the claim file, in violation of CIC § 2695.3(a). Specifically, in some cases
20 RESPONDENT failed to document the facts of loss and the investigative activity conducted on
21 the claim, making it impossible to reconstruct the pertinent events and dates concerning the claim.

22 t) In 29 instances, RESPONDENT failed to respond to communications
23 within 15 calendar days, in violation of CCR § 2695.5(b).

24 u) In 19 instances, RESPONDENT failed to explain the determination of the
25 cost of a comparable vehicle in writing, in violation of CCR §§ 2695.8(b)(1) and 2695.8(b)(3).

26 v) In 22 instances, RESPONDENT failed, upon acceptance of the claim, to
27 tender payment within 30 calendar days, in violation of CCR § 2695.7(h).

28 w) In 18 instances, RESPONDENT failed to provide the written basis for

1 denial of the claim, in violation of CCR § 2695.7(b)(1).

2 x) In 9 instances, RESPONDENT failed to provide the insured with the
3 proper written notices associated with retaining a salvage vehicle, in violation of CCR §
4 2695.8(b)(1)(A).

5 y) In 13 instances, RESPONDENT failed to disclose all benefits, coverage,
6 time limits or other provisions of the insurance policy, in violation of CCR § 2695.4(a). For
7 example, in some cases, RESPONDENT failed to disclose coverage for medical payments or
8 towing under the policy to the insured.

9 z) In 13 instances, RESPONDENT attempted to settle a claim by making an
10 offer that was unreasonably low, in violation of CCR § 2695.7(g). For example, RESPONDENT
11 sometimes applied betterment to a partial paint process or failed to pay the supplemental repair
12 bill. In at least one instance, RESPONDENT based its payment of the vehicle licensing fee on
13 the wrong vehicle.

14 aa) In 11 instances, RESPONDENT failed to fully document the determination
15 of value, including betterment, depreciation, or salvage in writing, in violation of CCR §§
16 2695.8(b)(1)(C) and 2695.8(i).

17 bb) In 8 instances, RESPONDENT failed to acknowledge notice of the claim
18 within 15 calendar days, in violation of CCR § 2695.5(e)(1).

19 cc) In 13 instances, RESPONDENT failed to advise the claimant he/she could
20 have their denied claim reviewed by the California Department of Insurance, in violation of CCR
21 § 2695.7(b)(3).

22 dd) In 6 instances, RESPONDENT failed to begin the investigation of the
23 claim within 15 calendar days or receipt, in violation of CCR § 2695.5(e)(3).

24 ee) In 6 instances, RESPONDENT misrepresented pertinent facts or insurance
25 policy provisions relating to coverage to claimants, in violation of CIC § 790.03(h)(1). For
26 example, in some cases, RESPONDENT advised insured that no coverage was available for
27 towing when there was or that medical payment coverage did not extend to a passenger in their
28 vehicle when it did.

1 ff) In 6 instances, RESPONDENT failed to record pertinent dates in the file,
2 in violation of CCR § 2695.3(b)(2). For example, files were missing the date the RESPONDENT
3 received the claim or the date the RESPONDENT received or sent relevant documents.

4 gg) In 4 instances, RESPONDENT failed to notify the insured that the file
5 would be reopened if RESPONDENT received notification that a comparable vehicle was
6 unavailable for the settlement amount offered and paid within 35 days, in violation of CCR §
7 2695.5(8)(e).

8 hh) In 2 instances, RESPONDENT failed to maintain a hard copy of the claim
9 files that is assessable, legible and capable of duplication for five years, in violation of CCR §
10 2595.3(b)(3).

11 ii) In 2 instances, RESPONDENT persisted in seeking information not
12 reasonable required for or material to the resolution of the claim dispute, in violation of CCR §
13 2695.7(d). Specifically, RESPONDENT persisted in obtaining an uninsured motorist certificate
14 from the DMV as proof that the at-fault driver was uninsured despite having sufficient evidence
15 of such based on its investigation.

16 jj) In 6 instances, RESPONDENT failed to provide written notice of any
17 statute of limitations or other time period requirement not less than 60 days prior to the expiration
18 date, in violation of CCR § 2695.7(f).

19 kk) In 1 instance, RESPONDENT failed, upon receiving proof of claim, to
20 accept or deny the claim within 80 calendar days, in violation of CCR § 2695.7(k)(1).

21 ll) In 1 instance, RESPONDENT failed to provide written notification to a
22 first party claimant as to whether subrogation would be pursued, in violation of CCR § 2695.7(p).

23 9. As a result of the claims examination, the Department recovered \$24,607
24 owed to consumers that was improperly withheld during the claims process. Following the
25 examination of claims practices, RESPONDENT conducted additional reviews and audits of their
26 claims files to bring them in compliance with the law. As a result of these additional
27 examinations, RESPONDENT returned an additional \$219,043 to consumers in fees, deductibles,
28 and other amounts that were improperly withheld during the claims process.

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.

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7 Dated: April 24, 2007

STEVE POIZNER
Insurance Commissioner

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

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