

1 CALIFORNIA DEPARTMENT OF INSURANCE
Consumer Law Unit
2 Wen Chao SBN: 237889
300 S. Spring Street, 9th Floor
3 Los Angeles, CA 90013
Telephone: 213-346-6206
4 Email: wen.chao@insurance.ca.gov

5 Attorney for The California Department of Insurance

6
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 GEICO General Insurance Company,
13 GEICO Indemnity Company,
14 GEICO Casualty Company, and
Government Employees Insurance
Company,

15
16 Respondents.
17
18
19
20

File No. UPAC-2016-00001

**ORDER TO SHOW CAUSE; STATEMENT
OF CHARGES; NOTICE OF
NONCOMPLIANCE WITH PRIOR
ORDERS (CIC §§ 790.03, 790.05); (10 CCR
§ 2695.1, et seq.), and**

**NOTICE OF MONETARY PENALTY
(CIC §§ 704.7, 790.03, 790.035, 790.05)**

21
22 **YOU ARE HEREBY NOTIFIED** that the Insurance Commissioner of the State of
23 California (“Commissioner”) has good cause to believe that the claims settlement practices of
24 GEICO General Insurance Company, GEICO Indemnity Company, GEICO Casualty Company,
25 and Government Employees Insurance Company (collectively “Respondents”) have violated
26 various provisions of the California Insurance Code (“CIC”) and Title 10, California Code of
27 Regulations (“CCR”). It is further alleged that the violations constitute a breach of prior Orders
28

1 the Commissioner issued against Respondents to cease and desist from engaging in methods,
2 acts, or practices that are in violation CIC sections 758(c), 758.5, 790.03(h)(5), and CCR
3 sections 2695.7(b)(1), 2695.7(g), 2695.8(f) and 2698.91. The manner and extent of the alleged
4 noncompliance is set forth below.

5
6 Respondents are and were at all relevant times, licensed to transact the business of
7 insurance in the State of California.

8 Respondents transact the business of insurance in California on risks or lines subject to
9 the provisions of the Insurance Code and the California Code of Regulations.

10 The violations alleged herein were discovered as the result of the California Department
11 of Insurance's ("Department") investigation of 153 consumer complaints during the period of
12 January 1, 2014 through June 1, 2015.

13 **ORDER TO SHOW CAUSE**

14
15 WHEREAS, the Insurance Commissioner of the state of California ("the
16 Commissioner") has reason to believe that Respondents have violated prior Orders issued in
17 2007 (Department's Case No. UPA 05048291) and 2011 (Department's Case No. UPA-2008-
18 0006) pursuant to California Insurance Code ("CIC") section 790.05 which have become final
19 and while the Orders are still in effect, as prohibited by CIC section 790.07; and,
20

21 WHEREAS, the Commissioner has reason to believe that Respondents' actions in
22 violation of the prior Orders also show Respondents have engaged in or continue to engage in
23 this State unfair methods of competition or unfair or deceptive acts or practices, and other
24 unlawful acts set forth in the STATEMENT OF CHARGES/ NOTICE OF
25 NONCOMPLIANCE WITH PRIOR ORDERS contained herein.
26

27 **JURISDICTION**

28 1. Pursuant to Government Code section 11503, the California Department of

1 Insurance (“Department”) files this matter in its official capacity.

2 2. Respondents are and at all relevant times have been holders of Certificate of
3 Authority issued by the Commissioner and are authorized to transact insurance business in the
4 state of California.

5 **BACKGROUND**

6
7 3. Between the periods of January 1, 2014 through June 1, 2015, The Department’s
8 Consumer Services Division received 153 consumer complaints against Respondents alleging
9 various violations of the Unfair Practices Act and Fair Claims Settlement Practices Regulations.

10 4. Prior to that, on April 5, 2006, the Commissioner had issued a Second Amended
11 Order to Show Cause and Statement of Charges (Department’s File No. UPA 05048291) (“2006
12 OSC”) alleging violations of Insurance Code section 758(c), 758.5, 790.03(h)(5) and CCR
13 sections 2695.7(g), 2695.7(b)(1), 2695.8(f), and 2698.91. Among the allegations, the
14 Commissioner specifically alleged Respondents adjusted repair estimates without having
15 conducted a labor rate survey to determine the prevailing labor rate in the area or provided any
16 other evidence or support that its adjustment of the repair shop’s estimate was reasonable.

17
18 5. Thereafter, Respondents, without admitting liability, wrongdoing or violation of
19 law, executed a Stipulation and Waiver wherein they agreed to implement various corrective
20 measures and to cease and desist from engaging in methods, acts, or practices that are in
21 violation of CIC sections 758(c), 758.5, 790.03(h)(5), and CCR sections 2695.7(b)(1),
22 2695.7(g), 2695.8(f) and 2698.91. Additionally, Respondent agreed to submit of a labor rate
23 survey that is compliant with all applicable statutes and regulations. A final Order approving the
24 Stipulation and Waiver was issued by the Commissioner in May 2007 (“2007 Order”). A copy
25 of the 2007 Order is attached hereto as Exhibit “A” and is incorporated herein by reference.
26
27
28

1 6. Subsequent to the 2007 Order, Respondents did submit a labor rate survey but the
2 survey was not compliant with the statues or regulations governing labor rate surveys. As a
3 result, the Department issued a second Order to Show Cause on December 16, 2008 (“2008
4 OSC”) against Respondents for similar violations involving labor rate surveys and for non-
5 compliance of the 2007 Order.
6

7 7. Thereafter and in connection with the 2008 OSC, Respondents, without admitting
8 liability, wrongdoing or violation of law, executed a Stipulation and Waiver followed by the
9 Commissioner’s Order adopting the Stipulation and Waiver on January 4, 2011(“2011 Order”).
10 The 2011 Order again ordered Respondents to cease and desist from engaging in methods, acts,
11 or practices that are in violation of CIC sections 758(c), 758.5, 790.03(h)(5), and CCR sections
12 2695.7(b)(1), 2695.7(g), 2695.8(f) and 2698.91. A copy of the 2011 Order is attached hereto as
13 Exhibit “B” and is incorporated herein by reference.
14

15 8. Now, as set forth in “STATEMENT OF CHARGES” below, the Department
16 believes and thereby alleges that Respondents are engaged in and continue to engage in acts or
17 practices that are in violation of the Fair Claims Settlement Practices Regulations (CCR §2695.1
18 et seq.) and the Unfair Practices Act (CIC §790 et seq.) in the following areas:

19 **Alleged violations specific to auto repair labor rates:**

20 a) Failing to send written denial of a claim, in violation of CCR section 2695.7(b)(1) and
21 CIC sections 790.03(h)(2), (3) and (13);

22 b) Failing to conduct and diligently pursue a thorough, fair and objective investigation, in
23 violation of CCR section 2695.7(d) and CIC section 790.03(h)(3);

24 c) Making an offer that is unreasonably low to settle a claim, in violation of CCR section
25 2695.7(g) and CIC sections 790.03(h)(1) & (5);
26

27 **Alleged violations specific to “basecoat reduction”:**
28

1 d) Failing to meet the requirement that the estimate prepared by or for the insurer shall be
2 of an amount that will allow for repairs to be made in accordance with accepted trade standards
3 for good and workmanlike automotive repairs by an “auto body repair shop” as defined in section
4 9889.51 of the Business and Professions Code and preparing an estimate that deviates from the
5 standards, costs, and/or guidelines provided by the third-party automobile collision repair
6 estimating software used by the insurer to prepare the estimate which results in an estimate that
7 would not allow for repairs to be made in accordance with accepted trade standards for good and
8 workmanlike automotive repairs by an auto body repair shop, in violation of CCR section
9 2695.8(f) and CIC section 790.03(h) (3);

11 **Alleged violations of additional claims practices:**

12 e) Failing to honor the methodology used in determining paint and material charges by
13 offering or paying an amount unrelated to the methodology, in violation of CIC section 758.6;

14 f) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to
15 coverages at issue, in violation of CIC section 790.03(h)(1);

16 g) Failing to acknowledge and act reasonably promptly upon communications with respect
17 to claims arising under insurance policies, in violation of CIC section 790.03(h)(2);

18 h) Failing to adopt and implement reasonable standards for the prompt investigation and
19 processing of claims arising under insurance policies; in violation of CIC section 790.03(h) (3);

20 i) Failing to effectuate prompt, fair and equitable settlements of claims in which liability
21 had become reasonably clear, in violation of CIC section 790.03(h)(5);

22 j) Failing to conduct business in its own name, in violation of CIC sections 880 and
23 790.03(h) (3);

24 k) Failing to report a claim that appeared to be fraudulent to the Department of Insurance
25 Fraud Division within 60 days after determination by the insurer that the claim appears to be
26
27
28

1 fraudulent, in violation of CIC sections 1872.4(a) and 790.03(h)(3);

2 l) Failing to ask the claimant, upon the filing of a claim, whether a child passenger restraint
3 system was in use by a child during the accident or was in the vehicle at the time of the accident.
4 The insurer also has an obligation to replace the child passenger restraint system or reimburse the
5 claimant for the cost of purchasing a new passenger restraint system, in violation of CIC section
6 11580.011(e);
7

8 m) Failing to maintain all documents, notes and work papers which reasonably pertain to
9 each claim in such detail that pertinent events and the dates of the events can be reconstructed, in
10 violation of CCR section 2695.3(a) and CIC section 790.03(h)(3);

11 n) Failing to record in the file the date the company received, processed, transmitted or
12 mailed every relevant document pertaining to the claim, in violation of CCR section 2695.3(b)(2)
13 and CIC section 790.03(h)(3);
14

15 o) Failing to immediately advise the insured when additional benefits under the policy
16 might be payable with additional proofs of claim and assist the insured in determining the extent
17 of the insurer's additional liability, in violation of CCR section 2695.4(a) and CIC section
18 790.03(h)(1);

19 p) Failing to respond within twenty-one (21) days to written or oral inquiries from the
20 Department. A complete response addresses all issues raised by the Department of Insurance in
21 its inquiry and includes copies of any documentation and claim files requested, in violation of
22 CCR section 2695.5(a) and CIC section 790.03(h)(2);
23

24 q) Failing to respond to communications from claimants within 15 calendar days, in
25 violation of CCR section 2695.5(b) and CIC section 790.03(h)(3);
26

27 r) Failing to acknowledge notice of claim within 15 calendar days, in violation of CCR
28 section 2695.5(e) (1) and CIC section 790.03(h) (3);

1 s) Failing to provide necessary forms, instructions, and reasonable assistance within 15
2 calendar days, in violation of CCR section 2695.5(e) (2) and CIC section 790.03(h) (3);

3 t) Failing to begin investigation of the claim within 15 calendar days, in violation of CCR
4 section 2695.5(e) (3) and CIC section 790.03(h)(3);

5 u) Failing to, upon receiving proof of claim, accept or deny the claim within 40 calendar
6 days, in violation of CCR section 2695.7(b) and CIC section 790.03(h)(3);

7 v) Failing to provide in writing the reasons for the denial of the claim in whole or in part
8 including the factual and legal bases for each reason given, in violation of CCR section
9 2695.7(b)(1) and CIC section 790.03(h)(3);

10 w) Failing to include a statement in its claim denial that, if the claimant believes the claim
11 has been wrongfully denied or rejected, he or she may have the matter reviewed by the California
12 Department of Insurance, in violation of CCR section 2695.7(b)(3) and CIC section 790.03(h)(3);

13 x) Failing to provide written notice of the need for additional time or information every
14 30 calendar days, in violation of CCR section 2695.7(c)(1) and CIC section 790.03(h)(3);

15 y) Failing to conduct and diligently pursue a thorough, fair and objective investigation, in
16 violation of CCR section 2695.7(d) and CIC section 790.03(h) (3);

17 z) Failing to provide written notice of any statute of limitation or other time period
18 requirement upon which the insurer may rely to deny a claim, in violation of CCR section
19 2695.7(f) and CIC section 790.03(h) (3);

20 aa) Attempting to settle a claim by making a settlement offer that was unreasonably low,
21 in violation of CCR section 2695.7(g) and CIC section 790.03(h)(5);

22 bb) Failing, upon acceptance of the claim, to tender payment within 30 calendar days, in
23 violation of CCR section 2695.7(h) and CIC section 790.03(h)(5);

1 cc) Failing to provide written notification to a first party claimant as to whether the insurer
2 intends to pursue subrogation, in violation of CCR section 2695.7(p) and CIC section
3 790.03(h)(3);

4 dd) Failing to include, in the settlement, the license fee and other annual fees computed
5 based upon the remaining term of the current registration, in violation of CCR section
6 2695.8(b)(1) and CIC section 790.03(h)(5);

7 ee) Failing to disclose in writing to the claimant that notice of the salvage retention by the
8 claimant must be provided to the Department of Motor Vehicles and that this notice may affect
9 the loss vehicle's future resale and/or insured value, in violation of CCR section 2695.8(b)(1)(A)
10 and CIC section 790.03(h)(3);

11 ff) Failing to meet the requirement that a comparable automobile must have been available
12 for retail purchase by the general public in the local market area within 90 days of the final
13 settlement offer. Regulation section 2695.8(b) (2) also specifies that the actual cost for a
14 comparable vehicle shall not include any deduction for the condition of a loss vehicle unless the
15 documented condition of the loss vehicle is below average for that particular year, make and
16 model of vehicle, in violation of CCR section 2695.8(b) (2) and CIC section 790.03(h)(3);

17 gg) Failing to meet the requirement that the estimate prepared by or for the insurer shall
18 be of an amount that will allow for repairs to be made in accordance with accepted trade standards
19 for good and workmanlike automotive repairs by an "auto body repair shop" as defined in section
20 9889.51 of the Business and Professions Code, in violation of CCR section 2695.8(f) and CIC
21 section 790.03(h) (3);

22 hh) Failing to supply the claimant with a copy of the estimate upon which the settlement
23 was based, in violation of CCR section 2695.8(f) and CIC section 790.03(h)(3);

24 ii) Failing to reasonably adjust any written estimates prepared by the repair shop of the
25
26
27
28

1 reasonably adjust the estimated prepared by the body shop is a violation of CCR section
2 2695.8(f) and CIC sections 790.03(h) (1) & (5).

3 15. Under CCR section 2695.7(g), an insurer shall not attempt to settle a claim by
4 making a settlement offer that is unreasonably low. A labor rate survey that is not reasonably
5 supported by data or that results in a labor rate below the labor rate that is prevailing in a
6 specific geographic area is not considered fair or equitable. Any attempt to use the labor rate
7 from such a survey to pay or settle a claim is deemed as a settlement offer that is unreasonably
8 low within the meaning of CCR section 2695.7(g) and CIC sections 790.03(h) (1) & (5) and a
9 violation thereof.
10

11 **“Basecoat Reduction”**

12 16. The Department believes and thereby alleges the Respondents improperly
13 deducted basecoat refinish labor time from the body shops’ repair estimates.
14

15 17. Under CCR section 2695.8(f), the estimate prepared by or for the insurer shall be
16 of an amount that will allow for repairs to be made in accordance with accepted trade standards
17 for good and workmanlike automotive repairs by an “auto body repair shop” as defined in
18 section 9889.51 of the Business and Professions Code. Furthermore, an insurer shall not deviate
19 from the standards, costs, and/or guidelines provided by the third-party automobile repair
20 estimating software used by the insurer to prepare the estimate, if such deviation would result in
21 an estimate that would not allow for repairs to be made in accordance with accepted trade
22 standards for good and workmanlike automotive repairs by an auto body repair shop. A
23 “basecoat reduction” refers to an insurer’s practice of reducing labor time from basecoat refinish
24 operation when the repair involves a body panel that is only partially damaged (also known as
25 “partial refinish”). Any basecoat reduction for a partial refinish that deviates from the insurer’s
26 estimating software must be reasonably supported. A basecoat reduction that reduces the
27
28

1 minimum labor time required under the accepted trade standards for good and workmanlike
2 repairs for a refinish operation is a violation of CCR section 2695.8(f) and CIC section
3 790.03(h)(3).

4 **Other Claims-Related Acts or Practices**

5 18. The Department believes and thereby alleges that the Respondents
6 have engaged in other acts or practices that are not in compliance with provisions of
7 the Fair Practices Act and Unfair Settlement Practices Regulations as identified in
8 Exhibit A.

9 **NOTICE OF NOCOMPLIANCE WITH PRIOR ORDERS**

10 19. The alleged non-compliant acts or practices described herein involve violations
11 of CIC section 790.03(h) (5) and CCR sections 2695.7(g) and 2695.8(f), which if proven, would
12 constitute as a violation of the prior 2007 and 2011 Orders.
13

14 **STATEMENT OF MONETARY PENALTY AND STATEMENT OF**
15 **POTENTIAL LIABILITY PURSUANT TO CIC SECTIONS 790.03 et. seq.**

16 20. The facts alleged above in Paragraphs 9 through 18, if proven, show that
17 Respondents engaged in unfair methods of competition and unfair and deceptive acts or
18 practices that are in violation of Fair Claims Settlement Practices Regulations and the Unfair
19 Practices Act, and of the 2007 and 2011 Orders.
20

21 21. The facts alleged above in Paragraphs 9 through 18, if proven, constitute
22 grounds, under section CIC 790.05, for the Insurance Commissioner to order Respondents to
23 cease and desist from engaging in such unfair acts or practices and to pay a civil penalty not to
24 exceed five thousand dollars (\$5,000) for each act, or if the act or practice was willful, a civil
25 penalty not to exceed ten thousand dollars (\$10,000) for each act as set forth under CIC
26 section 790.035.
27
28

1 \$10,000.00 for each act. This Notice may be amended to set forth additional willful acts in
2 violation of Unfair Practices Act and the Fair Claims Settlement Practices Regulations and to
3 seek additional penalties therefore in the amount of \$10,000.00 for each act.

4 RESPONDENTS ARE FURTHER NOTIFIED that, alternatively, in the event that those
5 acts involving violation of the Unfair Practices Act and the Fair Claims Settlement Practices
6 Regulations are not found to be willful violations of, then pursuant to Insurance Code section
7 790.05, the imposition of civil penalties will be sought in the amount of \$5,000.00 for each act.
8 The Commissioner further reserves the right to seek any other penalties provided for under
9 Insurance Code sections 704.7 and 790.07 in the event that the acts set forth above, or such acts
10 as may be alleged upon amendment hereof, were a violation of the prior 2007 and 2011 Orders.
11

12 The California Department of Insurance reserves the right to amend this pleading as new
13 facts become available.
14

15 Dated: June 24, 2016

16 CALIFORNIA DEPARTMENT OF INSURANCE

17
18
19 

20
21 BY _____

22 Wen Chao, Senior Staff Attorney
23
24
25
26
27
28

EXHIBIT A

2007 Order

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INSURANCE
3 SAN FRANCISCO
4

5 In the Matter of

6 **GEICO GENERAL INSURANCE**
7 **COMPANY, GOVERNMENT**
8 **EMPLOYEES INSURANCE COMPANY,**
9 **GEICO CASUALTY COMPANY, AND**
10 **GEICO INDEMNITY COMPANY**

11 Respondents.

File Nos. UPA 05048291
UPA 05048292
UPA 05048283
UPA 05048294

OAH No. N2005 110707

ORDER

12
13
14 **WHEREAS**, the Insurance Commissioner and the above-named Respondent
15 have executed the Stipulation and Waiver attached hereto, the provisions of which are hereby
16 incorporated by reference; and

17 **WHEREAS**, Respondent has waived the right to a hearing and has stipulated to
18 the entry of this Order; and

19 **WHEREAS**, Respondent has and continues to implement corrective measures,
20 so as to ensure compliance.

21 **NOW THEREFORE**, based upon the stipulations contained in said Stipulation
22 and Waiver, **IT IS ORDERED** that Respondent cease and desist from engaging in those
23 methods, acts, or practices which are violative of California Insurance Code Sections 758(c),
24 758.5, and 790.03(h)(5) and Title 10, California Code of Regulations, Section 2695.7(g),
25 2695.7(b)(1), 2695.8(f) and 2698.91.

26 Respondent is **FURTHER ORDERED** to pay the sum of Sixty Thousand
27 Dollars (\$60,000.00) to the State of California pursuant to California Insurance Code
28 790.035(a) within thirty (30) days of receipt of an invoice from the Department. Payment shall

1 be mailed to California Department of Insurance, Division of Accounting, 300 Capital Mall,
2 13th Floor, Sacramento, CA 95814.

3 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my
4 official seal this 2nd day of May 2007.

5
6 STEVE POIZNER
7 Insurance Commissioner

8
9 By /s/
10 JOSE AGUILAR
11 Assistant Chief Counsel
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
2011 ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
SAN FRANCISCO

In the Matter of

File No. UPA-2008-00006

GEICO GENERAL INSURANCE
COMPANY, GEICO INDEMNITY
COMPANY, GEICO CASUALTY
COMPANY, and GOVERNMENT
EMPLOYEES INSURANCE
COMPANY

ORDER

Respondents.

WHEREAS, the Insurance Commissioner and the above-named Respondent have executed the Stipulation and Waiver attached hereto, the provisions of which are hereby incorporated by reference; and

WHEREAS, Respondent has waived the right to a hearing and has stipulated to the entry of this Order; and

WHEREAS, Respondent has and continues to implement corrective measures, so as to ensure compliance.

NOW THEREFORE, based upon the stipulations contained in said Stipulation and Waiver, **IT IS ORDERED** that Respondent cease and desist from engaging in those methods, acts, or practices which are violative of California Insurance Code Sections 758(c), 758.5, and 790.03(h)(5) and Title 10, California Code of Regulations, Section 2695.7(g), 2695.7(b)(1), 2695.8(f) and 2698.91.

Respondent is **FURTHER ORDERED** to pay the sum of Ten Thousand Dollars (\$10,000.00) to the State of California pursuant to California Insurance Code 790.035(a) within thirty (30) days of receipt of an invoice from the Department. Payment shall be mailed to

1 California Department of Insurance, Accounting Division, 300 Capital Mall, 13th Floor,
2 Sacramento, CA 95814.

3
4 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal
5 this 4th day of JANUARY 2011.

6
7 DAVE JONES
8 Insurance Commissioner

9
10
11 By _____
12 JOSE AGUILAR