



**STATE OF ARIZONA**  
**DEPARTMENT OF INSURANCE**

**JANE DEE HULL**  
Governor

2910 NORTH 44th STREET, SUITE 210  
PHOENIX, ARIZONA 85018-7256  
602/912-8456 (phone) 602/912-8452 (fax)

**CHARLES R. COHEN**  
Director of Insurance

**CIRCULAR LETTER 2000-11**

**TO:** All Licensed Adjusters, Authorized Property and Casualty Insurers, Insurance Trade Associations, and Other Interested Parties

**FROM:** Charles R. Cohen  
Director of Insurance

**DATE:** September 20, 2000

**RE:** **Adjusters' Scope of Authority; Insurers' Obligations When Insured is Represented by Adjuster**

In June 1999, the Arizona State Bar Committee on the Rules of Professional Conduct issued Opinion No. 99-07<sup>1</sup> pertaining to the ethical implications for attorneys who interact with adjusters licensed pursuant to A.R.S. § 20-312 who are not employed by an insurer or otherwise supervised by a licensed attorney. The opinion concludes, in part, (1) that an attorney may not ethically negotiate with an opposing party's nonlawyer adjuster representative who is not supervised by an attorney and is not authorized to practice law; and (2) that an attorney may ethically communicate directly with an opposing party when the opposing party is represented by a nonlawyer adjuster who is not supervised by an attorney and is not authorized to practice law.

Though not binding upon nor directed at licensed adjusters and insurers transacting business in this state, the opinion obviously has a significant indirect impact on them. It therefore also indirectly impacts insureds in this state.

The purpose of this letter is to clarify the scope of an adjuster's authority under the license issued by this Department, and to clarify an insurer's obligations when interacting with an insured represented by a licensed adjuster.

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<sup>1</sup> The opinion notes that it is advisory in nature only and is not binding in any disciplinary or other legal proceeding.

## ADJUSTER'S SCOPE OF AUTHORITY

It is not the province of this Department, and therefore not part of the purpose of this letter, to determine whether adjusters acting within the scope of authority granted by their licenses are engaged in the "practice of law". The Department is vested by the state constitution with the authority to license, control and supervise insurers transacting business in this state, "as prescribed by law." A.R.S. Const. Art. 15, § 5. Accordingly, the specific powers and duties of the Department are prescribed by the state legislature in the insurance code, A.R.S. Title 20. Adjusters are also creatures of the insurance code; the parameters of their authority are therefore no more nor less than the content and intended effect of the statutes that establish them. The Department's prerogative in this matter extends no further than our review of A.R.S. Title 20 to determine what functions the legislature intended licensed adjusters to be authorized to perform, and how their participation in an insurance transaction affects insurers' regulatory obligations.

Pursuant to A.R.S. §§ 20-281 and 20-312, a licensed adjuster is authorized to "investigate and negotiate the settlement of claims arising under insurance contracts, on behalf of either the insurer or the insured."

The primary rule of statutory interpretation is to ascertain and give effect to the legislature's intent. Mail Boxes v. Industrial Com'n of Arizona, 181 Ariz. 119, 888 P.2d 777 (1995). Interpretation of a statute begins with the words of the statute. Kriz v. Buckeye Petroleum Co., Inc., 145 Ariz. 374, 701 P.2d 1182. Unless it appears from the context or otherwise that a different meaning is intended, language used in a statute has its ordinary meaning. State Compensation Fund v. Nelson, 153 Ariz. 450, 737 P.2d 1088 (1987). If the exact meaning cannot be ascertained from the words alone, it is appropriate to consider context, subject matter, historical background, effects and consequences, and spirit and purpose of law. Arizona Newspapers Ass'n., Inc. v. Superior Court In and For Maricopa County, 143 Ariz. 560, 694 P.2d 1174 (1985). Generally, doubts in the grant of a statutory privilege should be construed against those who claim it. Cyr & Evans Contracting Co. v. Graham, 2 Ariz. App. 196, 407 P.2d 385 (1965).

In interpreting insurance statutes, consideration must also be given to the expressed legislative policy that "[t]he objectives of the department of insurance are to administer the state insurance laws, protect the citizens of this state who purchase insurance, provide a better response to the needs of persons who purchase insurance and stimulate the insurance market by encouraging competition." Laws 1980, Ch. 230, § 1; see also State v. Arizona Pension Planning, 154 Ariz. 56, 739 P.2d 1373 (1987).

The statutory definition of adjuster set forth in A.R.S. § 20-281 unambiguously limits a licensed adjuster to first-party representation. An adjuster is authorized to act "on behalf of either the insurer or the insured."<sup>2</sup> Those are the parties to the insurance

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<sup>2</sup> By custom and usage, an adjuster representing an insured is often referred to as a "public adjuster".

contract out of which the subject claim arises. By necessary implication, a licensed adjuster is not authorized to represent third-party claimants. In addition to the clear statutory language on this point, the limitation to first-party adjusting is well established as a matter of industry custom and practice. See Appleman, *Insurance Law and Practice* §§ 8646 and 8649. This Department concurs with the following statement by the Supreme Court of Utah in Utah State Bar v. Summerhayes & Hayden, Public Adjusters, et al., 905 P.2d 867 at 868 (Utah 1995):

“First-party adjusting” occurs when an insured hires a public adjuster to assist the insured in filing a claim of loss with its insurer. First party adjusting is based on contract law . . . The insurance policy, as the contract between the insured and the insurer, delineates the rights of the parties . . . “Third party adjusting” occurs when an adjuster represents a stranger to the insurance contract on a claim asserted against a tort-feasor. Third-party adjusting is not based on principles of contract law but on principles of common law tort. There is no legal relationship between the party asserting the claim and the insurance company.

The next issue is which specific activities the authority to “investigate and negotiate the settlement of claims arising under insurance contracts” entitles a licensed adjuster to perform. The insurance code does not further define the key terms in the statutory definition of “adjuster”. Black’s Law Dictionary defines “adjuster” as “[o]ne who makes an adjustment or settlement, or who determines the amount of a claim, as a claim against an insurance company.” BLACK’S LAW DICTIONARY 43 (7<sup>th</sup> ed. 1999). Black’s defines “adjust” as “[t]o settle or arrange; to free from differences or discrepancies. To bring to satisfactory state so that parties are agreed . . . Determination of amount to be paid to insured by insurer to cover loss or damage sustained.” *Id.* “Investigate” means “to observe or inquire into in detail; to make a systematic inquiry or examination.” WEBSTER’S II, NEW RIVERSIDE UNIVERSITY DICTIONARY 642 (1994). “Negotiate” means “to conduct communications or conferences with a view to reaching a settlement or agreement.” BLACK’S LAW DICTIONARY 1059 (7<sup>th</sup> ed. 1999) “Settlement” means “an adjustment between persons concerning their dealings or difficulties; an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; . . . implies meeting of minds of parties to transaction or controversy.” *Id.* at 1377.

Based upon consideration of the ordinary meaning of this terminology, review of cited authorities, discussion with representatives of various constituencies impacted by these issues, and the Department’s own experience in regulating the insurance industry in this state, we find that a licensed adjuster is authorized to engage in the following general activities on behalf of an insured:

- Gathering all facts relevant to the claim, documenting and measuring damages, determining repair and replacement costs

- Evaluating coverage and valuation issues, and advising the insured with respect thereto
- Preparing a proof of loss
- Submitting a claim to the insurer
- Engaging in settlement negotiations with an authorized representative of the insurer with respect to coverage and the measurement and documentation of damages
- Advising the insured whether to accept the insurer's offer of settlement
- Assisting the insured in completing ordinary settlement documentation prepared by the insurer

While a licensed adjuster may, therefore, assist the insured in documenting and submitting the claim, including completion of ordinary settlement documentation used by the insurer, the adjuster is not authorized to render legal advice nor to prepare contracts, releases, instruments or other formal legal documentation that serves to create or settle legal rights between the parties. See Appleman, Insurance Law and Practice § 8648.

Evidently, those services licensed adjusters are authorized to provide with respect to the investigation and negotiation of the settlement of claims arising under insurance contracts overlap to some extent with the services licensed attorneys may generally provide. This is corroborated by the exception from the adjuster licensing requirement for a "licensed attorney at law who is qualified to practice law in this state". A.R.S. § 20-281.B. However, even in the context of a claim arising under an insurance contract, the authority of an adjuster is not coextensive with the authority of an attorney. The statutory language used to define an "adjuster" and circumscribe its authority evinces a legislative intent to limit an adjuster's authority to assisting the insured in obtaining a settlement of the claim. There is an obvious distinction between "negotiating settlement" and litigating or otherwise employing formal legal processes to obtain a ruling on a disputed claim. An attorney is authorized to act in a representative capacity by rendering services that require the knowledge and application of legal principles with respect to the conduct of a judicial or quasi-judicial proceeding. In granting the more limited authority to "investigate and negotiate settlement" of insurance claims, we do not believe the legislature intended for an adjuster's authority to extend that far.

Consequently, it is outside the scope of a licensed adjuster's authority to appear as a party's representative in a judicial or quasi-judicial proceeding, or to perform representative services customarily rendered by a licensed attorney with respect to the conduct of such proceeding, even if the proceeding relates to a claim under an insurance contract. These types of proceedings include formal court proceedings, judicial or non-judicial (i.e., contractual) arbitration, or administrative hearings.

Specifically, a licensed adjuster is not authorized to engage in the following activities in the context of such proceedings, without limitation:

- Initiating or defending such proceedings
- Preparing and submitting pleadings or motions
- Propounding discovery requests
- Taking or defending depositions or examinations under oath
- Examining or cross-examining witnesses
- Presenting evidence or legal arguments, orally or in writing

An adjuster's lack of authority to act in a representative capacity in the context of a legal proceeding does not, in any way, preclude an adjuster from serving as an expert witness or consultant on issues of coverage and valuation of damages. In connection therewith, an adjuster is not exceeding its authority when representing an insured in the context of an informal, "umpired" appraisal proceeding conducted pursuant to the insurance contract and wherein the sole issue is the documentation and valuation of loss.

Obviously, it is not possible to project every factual scenario wherein an adjuster's authority may be at issue. This letter is not intended as an exhaustive listing. It is intended to state the basic guidelines to assist resolution of the issues as they arise in various contexts.

### **INSURERS' OBLIGATIONS WHEN INSURED IS REPRESENTED BY ADJUSTER**

Insurers transacting business in this state are required to act reasonably and promptly with respect to the investigation and resolution of claims, including communications relating to claims. A.R.S. §§ 20-461 and 20-462. In some cases, insurers are subject to specific, mandatory time frames in their dealings with insureds, claimants and the Department. A.A.C. R20-6-801. Obviously, the State Bar opinion may present an obstacle to insurers' compliance with these requirements if attorneys representing insurers regard themselves as ethically constrained from negotiating, communicating and otherwise interacting with licensed adjusters lawfully representing insureds with respect to the investigation and negotiation of settlement of claims arising under insurance contracts.

Insurers are not excused from their statutory and regulatory obligations to act reasonably and promptly with respect to claims by their attorneys' refusal, on ethical or other grounds, to negotiate and interact with a licensed adjuster acting within the scope of his or her authority. Further, an insurer itself is not free to refuse to negotiate or

interact with such an adjuster. In the overall scheme for resolving insurance claims prescribed by the legislature, the role of a licensed adjuster is as lawful as the role of the insurer. An insurer must not allow the legitimate interests of its insureds to be prejudiced by the ethical quandaries of its attorneys.

Complaints and other information concerning adjusters acting improperly or outside their statutory authority, as outlined in this Circular Letter, should be directed to the Department's Consumer Affairs Division, Investigations Section, at (602) 912-8430. (Parties outside the Phoenix metropolitan area may use our Consumer Services Statewide Toll-Free Number: 1-800-325-2548.)