

FEB 13 1997

DEPT. OF INSURANCE
BY *[Signature]*

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

| | | |
|-------------------------|---|------------------------|
| In the Matter of: |) | Docket No. 96A-040-INS |
| |) | |
| LAWYERS ASSURANCE GROUP |) | ORDER |
| OF AMERICA, INC., |) | |
| |) | |
| Petitioner. |) | |
| |) | |

On February 10, 1997, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following order:


1. The recommended findings of fact and conclusions of law are adopted.
2. The Department's determination is affirmed that the Lawyers Assurance Group of America, Inc., (LAGA) is an insurer and that the LAGA contract is a prepaid legal insurance contract within the meaning of A.R.S. § 20-1097 et seq.

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

1 The final decision of the Director may be appealed to the Superior Court of Maricopa
2 County for judicial review pursuant to A.R.S. § 20-166.

3 EFFECTIVE this 12th day of February, 1997

4
5 
6 John A. Greene
7 Director of Insurance

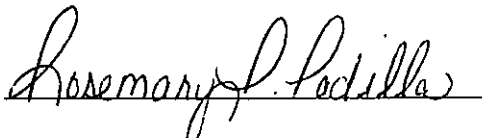
8 A copy of the foregoing mailed
9 this 13th day of February, 1997

10 Charles R. Cohen, Deputy Director
11 Gregory Y. Harris, Executive Assistant Director
12 Gary Torticill, Assistant Director
13 Deloris Williamson, Assistant Director
14 Scott Greenberg, Business Administrator
15 Catherine O'Neil, Assistant Director
16 Arizona Department of Insurance
17 2910 N. 44th Street, Suite 210
18 Phoenix, AZ 85018

19 Kathryn Leonard
20 Assistant Attorney General
21 1275 West Washington
22 Phoenix, AZ 85007

23 Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, AZ 85007

Merrick B. Firestone
KIMERER & LA VALLE, P.L.C.
100 W. Clarendon, Suite 2100
Phoenix, AZ 85013

21 
22
23

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF ARIZONA
RECEIVED

FEB 11 1997

In the Matter of:

No. 96A-040-INS DIRECTOR'S OFFICE
INSURANCE DEPT.

**LAWYERS ASSURANCE GROUP
OF AMERICA, INC.,**

**RECOMMENDED DECISION
OF ADMINISTRATIVE
LAW JUDGE**

Petitioner.

HEARING: November 13, 1996. The record of this matter closed on February 4, 1997.

APPEARANCES: Assistant Kathryn Leonard for the Arizona Department of Insurance and Merrick B. Firestone, Esq., for the Respondent .

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Lawyers Assurance Group, Inc. was organized in 1987 in California to provide legal services to San Diego businesses through attorneys that are contracted on a monthly basis to provide those services.

2. In 1993, Lawyers Assurance Group of America Inc. ("LAGA") was formed to franchise the business concept developed by Lawyers Assurance Group, Inc.

3. LAGA is a California corporation that contracts with individuals through a membership agreement to provide legal services upon payment of an annual membership fee.

4. The contract between LAGA and its members consist of an enrollment form and a membership agreement.

5. LAGA contracts with attorneys to provide certain legal services to LAGA members through a Participating Attorney Agreement.

Office of Administrative Hearings
1700 West Washington, Suite 602
Phoenix, Arizona 85007
(602) 542-9826

1 6. Attorneys who execute the Participating Attorney Agreement receive as
2 compensation 10% of the total monthly membership fees received by LAGA as a result
3 of membership fees billed the previous month by LAGA. Therefore, the participating
4 attorneys' compensation is dependent on the previous monthly fees received by LAGA.

5 7. The participating attorneys are contractually obligated to provide certain
6 legal services to LAGA members at no cost to those members as set forth below:
7 Each member has the right to business formation consultation relating to the form and
8 formation of new and existing business as well as changes to the business structures at
9 no charge; the right to a free telephone consultation with a participating attorney on
10 each new and separate legal matter; the right to a free office consultation for each new
11 and separate legal matter; the right to have a new document up to seven pages
12 reviewed once a month at no charge; the right to have simple letters and telephone
13 calls made by participating attorneys at no charge; and the opportunity to have free
14 legal consultation with a referral attorney that concentrates in a specialized field of law.
15 LAGA's business arrangement with its members contemplates reduced legal rates for
16 its members from both participating and referral attorneys for legal services other than
17 those set forth above or enumerated in the membership agreement.

18 8. A.R.S. §20-1097 (1) defines pre-paid legal insurance contracts as "a
19 contractual relationship to indemnify for specific legal services rendered in the normal
20 and ordinary course of business by an active member of the state bar of Arizona".

21 9. The LAGA program does not fall within any stated exceptions to A.R.S.
22 §20-1097.01. That statute states that :

23 This article does not apply to:

- 24 1. Any lawyer referral services authorized by the state bar of Arizona.
- 25 2. Retainer contracts made by attorneys-at-law with individual or group
26 clients with fees based on estimates of the nature and the amount of the
27 legal services to be provided.
- 28 3. The furnishing of legal assistance by employee organizations to their
29 members in matters relating to employment or occupations.
- 30 9. 4. The furnishing of legal assistance to members or dependents of
churches, cooperatives, educational institutions, credit unions, labor unions or other

1 organizations of employees in which the organization contracts directly with a lawyer or
2 a law firm for the provision of legal services.

3 10. A LAGA member would normally be charged for some if not all of the legal
4 services identified above in paragraph 7 but does not incur such an expense because
5 of the benefits received from being a LAGA member. Although counsel for LAGA
6 contended that the offering of the enumerated legal services is akin to lawyers who
7 perform or undertake legal representation on a contingency basis, there was no
8 credible evidence presented that supported that contention.

9 11. The Department asserted that LAGA transacts the business of insurance
10 and LAGA maintained that it is a referral plan and not an insurer.

11 12. Although LAGA is registered with the State Bar of Arizona, the evidence of
12 record established that LAGA is not a lawyer referral service authorized by the State
13 Bar of Arizona and thus does not qualify for exemption under A.R.S. §20-1097.01(A) on
14 that basis.

15 13. A.R.S. §20-104 states that the term "insurer" "includes every person
16 engaged in the business of making contracts of insurance."

17 14. The term "insurance" is defined in A.R.S. §20-103(A) as being "a contract
18 by which one undertakes to indemnify another or to pay a specified amount upon
19 determinable contingencies."

20 15. Acts which constitute the transaction of insurance business are set forth in
21 A.R.S. 20-106 (A) as follows:

- 22 1. Solicitation and inducement.
- 23 2. Preliminary negotiations.
- 24 3. Effectuation of a contract of insurance.
- 25 4. Transaction of matters subsequent to effectuation of the
26 contract and arising out of it.

27 16. The term "premium" is defined in A.R.S. §20-1103 as "the consideration for
28 insurance , by whatever name called".
29
30

1 17. LAGA presented evidence of determinations from state insurance
2 departments in other jurisdictions that concluded LAGA was not an insurer within the
3 meaning of their respective laws. LAGA contended that the laws in those jurisdictions
4 are the same or substantially similar to the laws Arizona pertaining to the definitions of
5 the terms "insurer", "insurance" and the acts which constitute transacting the business
6 of insurance. The Department maintained that those jurisdictions do not have laws
7 similar to Article 13 of A.R.S. Title 20 which pertains to prepaid legal insurance and that
8 the determinations in the other jurisdictions are not binding or persuasive. The
9 determinations in other jurisdictions that LAGA is not an insurer in those jurisdictions is
10 not persuasive or controlling as to whether LAGA is an insurer under the laws of
11 Arizona.

12 18. In asserting that LAGA is not an insurer, LAGA contended that it operates
13 similar to the Price Club. According to LAGA, Price Club uses its group buying power
14 to obtain goods at discounted rates and makes them available to its members for a
15 specific time period upon payment of a membership fee. LAGA, like Price Club, uses
16 its group buying power to provide a participating attorney list with a certain amount of
17 free access to its members upon payment of a membership fee. However, even LAGA
18 conceded that the primary difference between LAGA's operation and the Price Club is
19 that LAGA provides certain free legal services to its members. Under the
20 circumstances, it is determined that LAGA's contention that it is analogous to being like
21 Price Club rather than a provider of a prepaid legal service contract is not supported by
22 the evidence.

23 19. At the hearing, LAGA attempted to distinguish itself from Pre-Paid Legal
24 Services, Inc. ("Pre-Paid"). LAGA asserted that Pre-Paid offers a prepaid legal
25 insurance contract while LAGA maintained that LAGA offers a referral program. The
26 distinguishing factor, according to LAGA, was that Pre-Paid advertises that it provides
27 specific legal services such as: up to 2.5 hours for help with a suspended motor vehicle
28 license, 75 hours of assistance for the defense of civil and covered work-related
29
30

1 criminal charges, and up to 50 hours of legal services to "help defray the cost of audit
2 representation".

3 20. The evidence of record does not support a finding that LAGA's contractual
4 arrangement to be substantially different than Pre-Paid's with respect to the type of
5 service being provided. LAGA offers its members more than just a list of participating
6 attorneys, it offers certain free legal services and other legal services at a discount. It is
7 not significant that Pre-Paid identifies the legal services provided by its participating
8 attorneys with more particularity or that it offers different hours for different areas of
9 legal service. This does not distinguish the legal relationship Pre-Paid has with its
10 members from that which LAGA has with its members.

11 21. The Arizona Court of Appeals in Jim Click Ford, Inc. v. City of Tucson, 154
12 Ariz. 48, 739 P.2d 1365 (Ct. App. 1987) relying in part on Guaranteed Warranty Corp.
13 v. State ex rel. Humphrey, 23 Ariz. App. 327, 533 P.2d 87 (1975) identified five
14 elements of an insurance contract: 1) an insurable interest; 2) a risk of loss; 3) an
15 assumption of the risk by an insurer; 4) a general scheme to distribute the loss among a
16 larger group of persons bearing similar risks; and 5) the payment of a premium for the
17 assumption of the risk.

18 22. Though LAGA contended that its contract does not provide indemnification,
19 an essential element of an insurance contract, LAGA indemnifies its members from
20 unforeseen legal costs by providing coverage for certain legal services. Though LAGA
21 provides the legal services through both participating and referral attorneys, LAGA is
22 contractually obligated to its members to provide legal services.

23 23. The evidence established that LAGA's program as detailed in the
24 membership contract and related participating attorney contract and referral attorney
25 contract satisfies all of the essential five elements of an insurance contract as set forth
26 above. Each LAGA member has an insurable interest in protecting themselves from
27 incurring legal fees for certain services; the risk of loss is that a member will require
28 legal work and, may incur the cost of legal work; LAGA assumes that risk of loss, to a
29 degree, by providing its members a contractual obligation that participating attorneys
30

1 will perform certain legal services at no charge and other legal services are available at
2 a reduced rate to LAGA members; the risk of loss is distributed among LAGA members
3 with similar risks, i.e. each member may require legal services, some members may
4 require the use of a large number of the free legal services or legal services available at
5 a reduced rate while other members may not use any of those legal services; and
6 LAGA charges a premium (the membership fee) for LAGA's assumption of the risk of
7 loss.

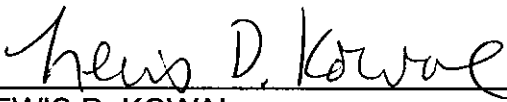
8 24. It is determined that the principal object of the LAGA contract is the
9 indemnification of legal services.

10 25. The evidence of record as set forth above, establishes that the LAGA
11 contract is a prepaid legal insurance contract within the meaning of A.R.S. §20-1097 et
12 seq.

13 **RECOMMENDED ORDER**

14 Based on the above, the Administrative Law Judge recommends that the
15 Director of the Department affirm the Department's determination that LAGA is an
16 insurer and that the LAGA contract is a prepaid legal contract within the meaning of
17 A.R.S. §20-1097 et seq.

18
19 Done this day, February 10, 1997.

20
21 
22 _____
23 LEWIS D. KOWAL
24 Administrative Law Judge

25 Original transmitted by mail this
26 10 day of February, 1997, to:

27 John Greene, Director
28 ATTN: Curvey Burton
29 Department of Insurance
30 2910 North 44th Street, #210
Phoenix, AZ 85018-7256

By 