

NATIONAL CONFERENCE OF LAWYERS, INSURANCE COMPANIES AND ADJUSTERS

CONFERENCE REPORT ON FAIR INSURANCE CLAIMS ADJUSTMENT

PREAMBLE

This Conference Report addresses issues that relate to the fair adjustment of insurance claims. It has been prepared by the National Conference of Lawyers, Insurance Companies and Adjusters, drawing upon the experience and expertise of the participants in their own fields. The Conference Report offers a suggested way of dealing with various problems affecting the public that relate to the fair adjustment of insurance claims. The suggestions in this Conference Report are advisory and voluntary, and readers are cautioned that there may well be other responsible ways of handling the issues that are raised. The only limitations and restrictions that can be binding or governing are those imposed by applicable statutes, court decisions, and regulations promulgated by government agencies.

Anyone who has, or thinks he or she has, a claim against an insurance company is entitled at all times to courteous, fair and just treatment from the representatives of that company. A claimant is entitled to an investigation of his or her claim and a reasonably prompt statement of the company's position with reference to it.

Companies have an obligation to pay all just claims, to avoid unnecessary litigation and to protect the insurance buying public from increased costs due to fraudulent or non-meritorious claims.

1. Claims under insurance policies, for the purpose of this statement, are divided in two classes:

First Party — A claim in contract by a policyholder or beneficiary directly against the insurance company which issued the contract;

Third Party — A claim in tort against the holder of a policy of liability insurance.

2. Under both classes of claims:

- (a) The companies or their representatives should not deal directly with any claimant known to be represented by an attorney without the attorney's knowledge. The word "deal" means to "negotiate," "settle," "do business with" and "negotiate for a settlement or a payment". Any definition of the word "deal" would not prevent a direct approach to a claimant for the purpose of checking his identification, or the bona fides of his representation by an attorney.

- (b) The company may deal directly with an unrepresented claimant.

3. In handling third party claims:

- (a) The company or its representatives should not advise the claimant as to his or her legal rights;

- (b) If any conflict of interest appears between the policyholder and the company, the policyholder should be advised of the situation and the right to retain his or her own counsel.

4. Under both classes of claims:

- (a) The company or its representative may properly interview any non-party witness without the consent of the opposing counsel or party. If any witness making a signed statement so requests, he or she should be given a copy thereof. This requirement includes a transcript of a recorded statement of the witness and such transcript should be supplied without charge. If the company has not transcribed the statement, the company should either furnish the witness with a transcript at a reasonable cost or permit the witness to make a transcript.

- (b) The company or its representative should not advise a claimant to refrain from seeking legal advice.

Adopted by the American Bar Association Board of Governors on June 19, 1981.