

# Statement of Principles on Respective Rights and Duties of Lawyers and Laymen in the Business of Adjusting Insurance Claims

The National Association of Independent Insurance Adjusters participated in formulating the Statement of Principles, and all members are committed to strict adherence thereto.

The following organizations are represented on the Conference Committee on Adjusters:

American Bar Association  
 American Mutual Alliance  
 Association of Casualty and Surety Companies  
 International Claim Association  
 National Association of Independent Insurance Adjusters  
 National Association of Independent Insurers  
 National Board of Fire Underwriters

The Conference Committee on Adjusters on January 8, 1939, besides considering other subjects, adopted and issued the following statement:

On July 24, 1938, at the Annual Convention of the American Bar Association, an agreement was entered into reading, in part, as follows:

"As a result of a thorough study of the relationship between the fields of the adjustment of claims and of the practice of law, it has been unanimously agreed between the American Bar Association Committee on the Unauthorized Practice of Law and the Committee on Lay Adjusters of the Insurance Section of said Association, in conference with a special committee representing all types of insurance interests—life, fire, marine and casualty—that laymen have a proper place in the adjustment of claims. There is hereby established a joint committee composed of ten members, and five who shall be representatives of the American Bar Association, and five who shall be representatives of the above designated insurance interests, to which complaints concerning insurance adjusters or attorneys handling insurance claims may be referred. Such committee shall be known as the Conference Committee on Adjusters. The Conference Committee, or subcommittee thereof, shall investigate such complaints and recommend or take such action as is necessary to correct practices deemed contrary to the public interests."

The Conference Committee on Ad-

justers, as formed under the above agreement, having considered the business of adjusting insurance claims in its relation to the policyholder, the claimants, and the practice of law, has adopted the following statement of the matters with which it has thus far dealt, which it believes presents a correct description of certain of the rights of the interested parties and the general public.

The insurance business operates under sanction of law for the protection of its policyholders and the public. The terms of insurance policies are nearly all upon standard forms adopted or approved by the state authorities in the interests of the public.

The Committee believes that anyone who has, or thinks he has, a claim against a 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 claim and a reasonably prompt statement of the company's position with reference to it.

The Committee recognizes that while the companies have a definite obligation to pay all just claims and to avoid unnecessary litigation, they have an equally definite obligation 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 into two classes:

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

Second—A claim of a third person in tort against the holder of a policy of liability insurance.

2. In the first class the claimant and the insurance company each has the right to discuss the merit of the claim with the other, and to settle it.

3. In the second class, under a policy by which the company insures the liability of the policyholder, it is recognized that the company has a direct financial interest in the claim presented against the policyholder, and in a suit in which the name of the company may not appear as a party litigant, but which the company is obliged to defend in the name of the

policyholder. Therefore, the company has a right,

(a) To discuss with the policyholder or the claimant the merit of the claim, and to settle it.

(b) To investigate the facts, interview witnesses, appraise damages, consider and determine the liability of the insurance company and its policyholder in the factual circumstances.

4. In handling claims under the second class—

(a) The companies or their representatives\* will not advise the claimant as to his legal rights. (Note: \*At a meeting on March 7, 1954, the Conference Committee adopted the following interpretation: The word "representative" or "representatives" means any person, firm, partnership or corporation which is representing an insurance company in the handling of a claim.)

(b) The companies and their representatives\*, including attorneys, will inform the policyholder of the progress of any suit against the policyholder and its probable results. If any diversity of interest shall appear between the policyholder and the company, the policyholder shall be fully advised of the situation and invited to retain his own counsel. Without limiting the general application of the foregoing, it is contemplated that this will be done in any case in which it appears probable that an amount in excess of the limit of the policy is involved, or in any case which the company is defending under a reservation of rights, or in any case in which the prosecution of a counterclaim appears advantageous to the policyholder.

5. Under both classes of Claims—

(a-1) The companies or their representatives\* will not deal\*\* directly with any claimant represented by an attorney without the consent of the attorney. (Note: \*\*At meetings on September 8, 1940 and February 20, 1955, the Conference Committee adopted the following interpretation: 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 getting information or identification, or checking the bona fides of his representation by an attorney.)

(a-2) No lay person, lay firm, lay partnership or corporation serving as a representative\* of an insurance company in the handling of a claim, shall engage in the practice of law.

(b) The companies may properly interview any witness#, or prospective witnesses, without the consent of opposing counsel or party. (Note: #At Meetings on September 8, 1940 and February 20, 1955, the Conference Committee adopted the following interpretation: The word "witness" shall be construed to include 'parties,' but this construction shall not authorize an interview of a party after he is represented by an attorney.) In doing so, however, the company representative\* will scrupulously avoid any suggestion calculated to induce the witnesses to suppress or deviate from the truth, or in any degree affect their free or untrammelled conduct when appearing at the trial or on the witness stand. If any witness # # making a signed statement so requests he shall be given a copy there-

of. (Note: ##At a meeting on March 7, 1954, the Conference Committee agreed: (1) that this language applies to all witnesses—plaintiffs, defendants and neutral witnesses; (2) that no time limit is placed upon the witness requesting a copy of this statement; and (3) that the obligation to furnish the copy of the statement runs only to the witness himself or herself.)

(c) The companies or their representatives\* will not advise claimant to refrain from seeking legal advice, or against the retention of counsel to protect his interest.

(d) The companies will respect the disabilities of minors and incompetents, and agree that no settlement of a cause of action of an infant or an incompetent shall be presented to a court for approval, except under provision for an investigation of propriety of the settlement either by the court or by counsel independent of the defendant.

(e) The Companies will not permit their employees—whether laymen or lawyers—to collect for agents or policyholders claims or accounts in which the company has no interest.

(f) The companies recognize that

the Canons of Ethics of the American Bar Association apply to all branches of the legal profession, and that specialists in particular branches are not to be considered as exempt from the application of those Canons.

(g) Lay adjusters will only be permitted to fill in blanks or release forms previously drafted by counsel, and they will be forbidden to draft special releases called for by the unusual circumstances of any settlement. All such special releases shall be prepared by counsel.

(h) The companies will undertake to be responsible for the conduct of their employees in observing and executing the foregoing principles, and will endeavor to see that their representatives\*, other than employees, do likewise.

6. The Conference Committee will continue to meet for the further consideration of the foregoing matters, and of the problems not dealt with in this statement, and the Committee expresses the hope that all complaints of the conduct of lawyers or insurance companies in connection with claims under insurance policies may be referred to the Committee for its consideration.

