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CIRCULAR LETTER FROM AZ DEPT OF INSURANCE PROVIDES STRONG AMMUNITION IN LOW SPEED IMPACT CASES

The Arizona Department of Insurance (ADOI) has issued an order mandating that insurers conduct fair and reasonable investigations of automobile accidents, and that sole reliance upon an engineer or accident reconstructionist to determine causation is unlawful.

We have attached a full copy of this Circular Letter for your use. We suggest that you use it as a basis to file complaints with ADOI, and as part of motions to exclude expert testimony by defense engineers.

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DEPARTMENT OF INSURANCE

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CIRCULAR LETTER 2000-2

TO: All Insurers Authorized to Transact Insurance in Arizona, Insurance Trade Associations, Agents' Associations and Other Interested Parties
FROM: Charles R. Cohen
Director of Insurance
DATE: January 7, 2000
RE: **Standards for Reasonable Investigation of Claims**

The Arizona Department of Insurance (Department) has received complaints that some private passenger automobile insurers are engaging in unfair claim settlement practices relative to "low impact" bodily injury claims. Generally, these are claims for "soft tissue" bodily injuries claimed to have been sustained in collisions that occur at low relative speed where the physical damage to the vehicles is minimal. Many of these complaints arise out of insurers' alleged reliance on "biomechanical" or "injury causation" analyses, and out of insurers' alleged application of presumptive guidelines predicated on those analyses, to deny or under value claims in this class. The purpose of this circular letter is to remind insurers of their legal duties under the Unfair Claim Settlement Practices Act, A.R.S. § 20-461, specifically as they relate to "low impact" claims.

A.R.S. § 20-461 provides in pertinent part:

A. A person shall not commit or perform with such a frequency to indicate as a general business practice any of the following:

3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under an insurance policy.

4. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy relative to the facts or applicable law for denial of claims or for the offer of a compromise settlement.

These provisions require insurers to conduct a fair and reasonable investigation of each claim, including consideration of all available information relating to the claim. A fair and reasonable investigation includes a genuine effort to determine the nature and extent of the injuries actually sustained by the claimant. Though a claims

investigation may begin with an assessment of the likelihood of the claimed injury based on certain characteristics of the collision and its observable consequences, the investigation must progress to an evaluation of all the reasonably available relevant evidence to determine what injury the particular claimant actually sustained. If an insurer merely determines that it has an arguable basis to assert that it is unlikely that a claimant could have been injured at all or beyond a certain extent based solely on the relative speed of the collision and the extent of resulting physical damage, the insurer has not completed a fair and reasonable investigation of the claim. Generally, a fair and reasonable investigation of a first or third party claim for bodily injury arising out of a vehicular collision should include consideration of, at a minimum, if reasonably available: (1) claimant statements; (2) witness statements; (3) police reports; (4) visual evidence depicting the full nature and extent of the physical damage to all vehicles involved in the collision and any other property damage; and (5) relevant medical records and physician statements pertaining to both medical history of the claimant and treatment arising out of the subject collision. If the insurer is unable to obtain any of this basic information, the claim file should reflect the attempts to obtain the information and an explanation as to why the information was unavailable. An insurer may not refuse to accept or consider relevant information offered by the claimant.

These same general principles apply to the use of biomechanical or injury causation analyses to evaluate low impact claims. This kind of analysis is an attempt to extrapolate the severity of bodily injuries resulting from a collision through assessment of the objective consequences of the collision, particularly the physical damage to the vehicles. Because it is a predictive exercise that ultimately cannot yield more than an opinion as to the likelihood of bodily injury, it cannot constitute the sole basis for a final claim decision that comports with the requirements of A.R.S. § 20-461. Before it may arrive at a final decision, the insurer must also genuinely consider the other available relevant evidence to determine what specific injuries the particular claimant actually sustained as a result of the collision.

An insurer may not establish generic profiles of claims and claimants on the basis of which it makes presumptions about the validity or value of particular claims, and then rely upon those presumptions, without further investigation, to make and communicate final settlement decisions. Claims settlement decisions, including whether an insurer is willing to settle a claim and the amount of settlement, must be based onfair, individualized investigations.

Insurers should also note the provisions of A.R.S. § 20-461(A)(14), quoted above, which are related to the requirement to conduct a fair and reasonable investigation. An insurer must provide an explanation of a denial or settlement offer that is based on and reflects a fair and reasonable investigation. It would constitute a violation of A.R.S. § 20-461 for an insurer to communicate apparent final decisions concerning the merit or value of a claim to a claimant to discourage further pursuit of the claim, without first conducting and completing a fair and reasonable investigation as described in this circular letter.

Unlike a court, the Department cannot adjudicate claims, determine fault, value

losses, weigh evidence, prescribe rules and principles of evidence, assess the qualifications or credibility of witnesses and experts, or regulate the conduct of ongoing litigation. However, the Department will determine whether insurers have investigated claims in a fair and reasonable manner in accordance with A.R.S. Title 20. The Department will evaluate insurers' compliance with A.R.S. § 20-461, as described in this circular letter, through review of complaints and through market conduct examinations.