DEPARTMENT OF ADMINISTRATION
LIABILITY MANUAL

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Preface

This manual is designed as a guide and resource for the handling of liability claims. Its purpose is to provide a reference source for statutory information, establish processes for the timely and appropriate resolution of claims, and to serve as a training tool for our claims staff.

This is the fourth version of the liability claims manual prepared by the Claims Department, last updated in 1996. To accomplish the needed revisions, a task force of seasoned claims adjusters from Phoenix and Tucson spent ten months reviewing each section, conducting research on statutory changes, and meticulously editing the manual.

We expect this manual to be used frequently and improved over time—by you, the adjusters. We anticipate a review and revision cycle of approximately every five years, with interim updates as needed to reflect statutory changes, case law or coverage issues. It will be the responsibility of each adjuster to maintain their manual with the most recent information as well as stay abreast of departmental or procedural changes that may affect claims handling.

We are indebted to Elizabeth Pence, Task Force Chair; and members James Murray, Ed Walsh and Michael Keller, for their time and hard work on this project. We also wish to thank Marsh Risk Consulting for their assistance in project facilitation, and formatting and preparation of the manual.

Mike Murphy
Manager, Claims Department
State of Arizona Department of Administration
June 28, 2004

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Introduction

Welcome to the fourth edition of the Liability Claims Manual for the State of Arizona Department of Administration, Risk Management Department.

There have been a number of changes since the third edition was prepared in 1996. It is important for you to know what is new, what has changed and what has stayed as it was.

New features to the manual are:

- Larger Fonts
- Detailed Table of Contents
- Introduction and General Sections
- A major subject Index
- All referenced A.R.S in Section 1 Exhibits
- Exhibits at the end of each Section
- Inclusion of supplemental memos or procedures that are used in the department
- Manuals will be numbered and distributed to staff to assist in update management

The majority of changes to the manual were in the statutory references, case law citations and steps to be followed in claims handling. The major items changed, revised and updated were:

- Updates of all A.R.S and corrected references in the text
- Updates in case law
- Edits to text to omit outdated references or steps
- Edits to text to add and update references related to technology changes
- Pages reserved for future additions to the manual.

Some portions of the manual are essentially unchanged. For example, all of the manuals sections remained and have been updated.

Using the Manual for Training

This manual has been revised to allow it to be used for training—whether it is a new employee or an existing employee seeking advancement or a refresher on liability claims handling. For each section and for each topic in that section, the policy, procedural steps, tasks and references are provided along with forms that must be completed. Managers are invited to use this manual when training to assure consistency in claims handling and to foster best practices in the claims department.

Manual Update Cycle

The Claims Department will initiate an update cycle for approximately every five years. With this cycle, the next full revision would take place in 2009-10. In the interim, changes may be made to the manual and new pages distributed as needed. Please replace the pages as directed and discontinue to use the old pages. Memos or directives that related to the manual will be referenced in the subject line, and should be hole punched and inserted in the manual in the appropriate section.

Currency of Information

The manual has been updated and is current as of the revision date noted in the footer of each section. Each adjuster will be responsible for maintaining published updated in their manual and for conducting necessary research on statutes or case law where pending actions could affect an open or future claim. We ask that adjusters share information as soon as received with management and assist in disseminating the information in all manuals. If a manual is found missing updates, please bring the manual to management's attention for updating.

1. General

1.1. General Reference Sources for the Manual

1.1.1. Introduction

This General Section was established at the beginning of the manual to serve as the location for important reference documents that an adjuster may use. All of the reference documents are found in the Section 1 Exhibits. All of the reference documents are unique in that they are the most subject to change by revision or modification, specifically the A.R.S, Rules and Regulations, and Rules of the Court. We have also included a list of Agency Abbreviations, and a list of frequently used acronyms or abbreviations in the claims handling process, along with an Organization Chart for the Claims Department. By locating all of these reference documents in the General Section, Exhibit pages that are updated can be easily found.

1.1.2. Manual Disclaimer

This manual is a guide prepared by and provided to liability claims adjusters for use within the Arizona Department of Administration Risk Management Office only. This manual is one of several resources and references available to claims adjusters and as such is not to be considered as the only source of claims handling information or statutes. While every effort has been made to verify the currency of the information herein, we do not guarantee or warrant the completeness of this manual due to the changing nature of the legal environment, case law and legislative actions.

The Claims Department may address procedural changes by memorandum or directive, with such changes to be included in the manual at the next revision cycle. Any textual errors are inadvertent and should be brought to the attention of the Claims Manager for correction. The Claims Department reserves the right to change, modify, update, revise or suspend a part of or the entire manual at any time.

1.1.3. Arizona Revised Statutes (A.R.S.) Reference Tabs

We have prepared a tabbed Exhibit in this section for A.R.S. that defines coverage and claims procedures for the State of Arizona. The Exhibits in Section 1 of this manual is the ONLY location of the Arizona Revised Statutes as noted or referenced in the following sections. In the event that an A.R.S. is revised, the updated version will be provided and it will be the responsibility of the adjuster to replace the A.R.S. in the Exhibits.

1.2. EXHIBITS: GENERAL SECTION

A. Arizona Revised Statutes

- **A.R.S. § 12-348**
- **A.R.S. § 12-502**
- **A.R.S. § 12-510**
- **A.R.S. § 12-820**
- **A.R.S. § 12-820.01**
- **A.R.S. § 12-820.02**
- **A.R.S. § 12-820.03**
- **A.R.S. § 12-820.04**
- **A.R.S. § 12-820.05**
- **A.R.S. § 12-821**
- **A.R.S. § 12-821.01**
- **A.R.S. § 12-822**
- **A.R.S. § 12-823**
- **A.R.S. § 23-901.06**
- **A.R.S. § 33-931 through A.R.S. § 33-936**
- **A.R.S. § 33-1551**
- **A.R.S. § 41-621**
- **A.R.S. § 41-621.01**
- **A.R.S. § 41-622**

B. R2-10-101 through R2-10-406

C. Arizona Rules of Court

D. Agency Abbreviation Sheet

E. Acronym/Abbreviation List

F. Organization Chart

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- **A.R.S. § 33-931 through A.R.S. § 33-936**
- **A.R.S. § 41-621**
- **A.R.S. § 41-621.01**
- **A.R.S. § 41-622**

Arizona Rules of Court (C)

Organization Chart (F)

R2-10-101 through R2-10-406 (B)

Issue Date: July 2004
Revision Dates: Dec 1995, Jan 1996, Aug 2003

Section: General

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2. Coverage

2.1. Statutory Authority Rules and Regulations

2.1.1. Introduction

All liability coverage provided by the Department of Administration's Risk Management Section is set forth in the statutes, specifically A.R.S. § 41-621 and. A.R.S. § 41-622. The statutes are defined further in the Rules and Regulations, R2-10-101 through R2-10-105. *Reference exhibit: –AG Handbook in Secton 7- Litigation.*

2.1.2. Who is Covered

A.R.S. § 41-621 states that the Department of Administration shall obtain insurance or self-insure, the state and its departments, agencies, boards and commissions and all officers, agents and employee thereof against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization. *Reference exhibits: State v. Shallock & State v. Heinz in Section 2 - Coverage.*

Liability coverage is also extended to volunteers acting at the direction of state officials, and within the course and scope of state-authorized activities A.R.S. § 41-621 R.

The states self-insurance is excess of any other valid and collectable insurance A.R.S. § 41-621 E.

The following guidelines have been established by Risk Management to determine whether a specific entity is a state agency, department, board or commission and thus

eligible for coverage under the State Risk Management Program:

- Must be authorized by statute.
- Must be supported by general fund moneys or revenues through licensing or taxing authorized by statute.
- There must be control and supervision by state authorized authorities. The operation is accountable to the state for its actions.
- All lawsuits against the entity would be defended by the Attorney General's Office as authorized by A.R.S. § 41-621 2M.
- As per Court Order and/or Decision.

2.1.3. Agents of the State

The question as to who is an agent of the state and thus covered by Risk Management has been an area of debate. Many agencies and universities have asked for very liberal interpretations in order to provide coverage to certain groups.

Although the definition of an "agent" can be very broad and could include professional people providing services on behalf of the state, Risk Management does not consider any of the following agents of the state for the purposes of liability coverage:

- Contractors of all types, that are required to provide their own insurance and hold the state harmless. Certificates of insurance are required naming the state as an additional named insured. *Reference*

exhibit: Wiggs v. City of Phoenix in Section 2 - Coverage.

- Vendors of all types, that are required to provide their own insurance and hold the state harmless. Certificates of insurance are required naming the state as an additional named insured. *Reference exhibit: Arizona State Fair Premise Liability Coverage in Section 2 - Coverage.*
- Special interest groups of all types. Those groups that support state agencies physically or financially are not covered by Risk Management self-insurance or private insurance of the state.
- University Clubs. Those clubs which are not part of the educational curriculum and sponsored by the University (i.e., parachute clubs, ski clubs, or other social clubs).
- Students at Universities are not agents of the state, unless they are acting or performing duties for University sponsored and supervised activities and then only within the scope and course of the authorized event or activity.
- Co-promoted activities where the agency or University has assumed the liability of the entity or person is statutorily illegal. No agency may assume any liability of non-state entities or persons. Some volunteers may be covered by Workers Compensation as per A.R.S. § 23-901.6. There may also be alternative coverage available for volunteers purchased by the Agency. *Reference exhibit: Volunteer Medical Insurance Policy Summary in Section 2 - Coverage.*

2.1.4. Probation Officers/Court Personnel

In Acevedo v Pima County Adult Probation Department the court ruled that probation officers, although paid by the counties are officers, agents and employees of the Judicial Branch of the State and thus for the purposes of liability, covered under the State Risk Management Program as per Acevedo v. Pima County. This decision has been interpreted to extend coverage for other court personnel such as bailiffs, juvenile detention officers, clerk of court, etc. It is imperative that on new losses involving "court personnel" that the adjuster confirm with their supervisor whether liability coverage applies. *Reference exhibits: Coverage of Court Employees under Acevedo & Scope of Coverage for Arizona Courts in Section 2 - Coverage.*

This coverage does not extend to Justices of the Peace or Constables. However, other Justice Court employees may be covered. It is imperative that on new losses involving court personel, that the adjuster confirm with their supervisor whether coverage applies. *Reference exhibits: Maricopa County Superior Court Coverage & State Representation of Justice Courts in Maricopa County in Section 2 - Coverage.*

2.1.5. Auto Liability Coverage

The Administrative Rules and Regulations specifically R2-10-107 A through D, define when a driver is considered to be in the course and scope or authorization of employment and thus covered by State Risk Management. *Reference exhibit: IGA between Maricopa County and State Risk Management in Section 2 - Coverage.*

When driving a state owned or county vehicle under the following conditions:

1. An officer, agent or employee shall be covered within the limitations of A.R.S. § 41-621, et seq., while driving a state-owned or a non-state-owned vehicle in the course and scope or authorization of employment. Each agency will ensure that anyone operating a state-owned vehicle or non-state-owned vehicle on state business has a valid driver's license. Coverage shall be on a primary basis for state-owned, leased, or rented vehicle use and on an excess basis for non-state-owned vehicle use.

2. All officers, agents or employees shall be considered within the course and scope of their employment while driving a state-owned vehicle under the following conditions:

   - While driving on authorized state business
   - While driving to and from work
   - While driving to and from lunch on a working day
   - While driving outside the geographical area of regular employment on authorized state travel
   - While driving at any other specifically state-authorized time outside regular employment hours
   - While driving to and from meals while on out-of-town travel

3. There is no coverage for an employee while driving a state-owned or non-state-owned vehicle outside the course and scope or authorization of employment.

4. An employee will not be considered within the course and scope of employment while driving a non-state-owned vehicle:

   - While driving to and from work
   - While driving to and from lunch in the area of employment and not on officially authorized state business
   - While driving on other than state-authorized business

2.1.6. Uninsured/Underinsured Motorist Coverage

The Risk Management Section does not provide uninsured or underinsured motorist coverage. If a state employee is involved in an auto accident while in the course and scope of employment and the responsible party is uninsured or underinsured the state employee will not receive compensation from the state beyond that which is provided by State Workers' Compensation benefits.

If a state employee is transporting individuals that are not state employees, no uninsured/underinsured motorist coverage is available to those individuals.

2.1.7. Collision Damage to State Employee Vehicles

If a state employee, while in the course and scope of employment, damages to their own vehicle, the state does not pay for physical damage, as per R-2-10-107.

2.1.8. County Vehicles Used by Court Personnel

Auto liability claims involving court personnel while performing a court related function are covered under the State Risk Management Program in the same manner as all others covered under A.R.S. § 41-621.

The state will pay collision damage to county vehicles if damage is caused by the negligence of court personnel using that vehicle. *Reference exhibit: Maricopa County – State IGA in Section 2 - Coverage.*

2.1.9. Exclusions

The following two exclusions as stated in A.R.S. § 41-621.L. are the only exclusions of liability coverage applicable to subsections A, B, and E.

- Losses that arise out of and are directly attributable to an act or omission determined by a court to be a felony by a person who is provided coverage pursuant to Article 41-621 L1 unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle.
- Losses arising out of contractual breaches.

2.1.10. Misapplied Payments

If an agency fails to properly process payment that it receives, coverage may be provided. The adjuster should review the claim with the supervisor before settling or denying the claim. *Reference exhibits: Risk Management Coverage when DES pays the wrong person & Maricopa County Superior Court Coverage in Section 2- Coverage.*

2.2. Attorney Fees & Cost Awards A.R.S. § 12-348

2.2.1. Introduction

A.R.S. § 12-348 is a means by which the courts can award attorneys fees and costs to a prevailing party in certain types of court proceedings. The six types of actions covered by this statute are listed separately in the statute.

The Department of Administration has delegated the responsibility of adjustment and payment of these claims to Risk Management. *Reference exhibit: A.R.S. 12 § 348 memo dated 6-28-04 from AG's Office..*

2.2.2. Claim Adjustment Process

If Risk Management received notice of a particular case in which such an award is likely the assigned adjuster must provide input into the decision making process to insure the exposure to fees and costs are minimized.

In many cases, Risk Management does not become aware of these types of cases until after there has been an award and the agency does not have the funds available or refuses to pay the award. In those cases the following documents must be obtained:

- A written demand from the person who has received the award.
- Photocopies of the original complaint and other pertinent documents detailing the facts of the litigation.
- Photocopy of the court document awarding fees and costs by authority of A.R.S. § 12-348.

- Letter from the agency head or designee stating that the agency has no funds appropriated, designated or assignable to pay the judgement.

These losses are to be coded as “Real Property”, Category Code “A.R.S. § 12-348”, and Cause Code “fees and costs”.

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2.3. EXHIBITS: COVERAGE SECTION

A. State v. Heinz

B. State v. Schallock

C. Wiggs v. City of Phoenix

D. State Fair and Fairgrounds Coverage

E. Volunteer Insurance Policies:

- **E1. State of Arizona Coverage 2004/2005**
- **E2. DES 2003/2004**
- **E2. G&F 2003/2004**
- **E2. AZ Braille & Talking Books 2003/2004**
- **E2. Library & Archives 2003/2004**
- **E2. Public Records Museum 2003/2004**
- **E3. State Parks 2003/2004**
- **E3. ASDB 2003/2004**
- **E4. ASU 2003/2004**

F. ACEVEDO Ruling:

- **F1. Coverage of Court Employees under ACEVEDO**
- **F2. Scope of Coverage for AZ Courts**
- **F3. Maricopa County Superior Court Coverage**
- **F4. Acevedo v. Pima County (COA)**
- **F5. Acevedo v. Pima County (AZ Sup. Crt.)**
- **F6. State v. Pima County (COA)**

G. Coverage for Lower Courts

H. IGA between Maricopa County and State Risk Management

I. DES Misapplied Payments

J. MC Sup. Crt. Coverage (misapplied payments)

K. A.R.S 12 § 348 Memo dated 6-28-04 from AG's Office

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Maricopa County Superior Court Coverage (F3)

MC Sup. Crt. Coverage (misapplied payments) (J)

Scope of Coverage for AZ Courts (F2)

State Fair and Fairgrounds Coverage (D)

State v. Heinz (A)

State v. Schallock (B)

Volunteer Insurance Policies (E):

- **ASU- 2003/2004**
- **AZ Braille & Talking Books 2003/2004**
- **DES 2003/2004**
- **G&F 2003/2004**
- **Library & Archives 2003/2004**
- **Public Records Museum 2003/2004**
- **State Parks ASDB 2003/2004**
- **State of AZ Coverage 2004/2005**

Wiggs v. City of Phoenix (C)

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Section: Coverage

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3. Statutory Defense

3.1. Statute A.R.S. § 12-821

3.1.1. Introduction

The first step in handling any liability claim against the state is to determine that the "claim" was filed timely and correctly. If there is a defect in the claim, the adjuster is to proceed as outlined in the Investigation Section of this manual. A.R.S. § 12-821.01A states, in part, that claims against a public entity or public employee shall file such claim as prescribed in the Arizona Rules of Civil Procedure, Rule 4.1(h). It is imperative that all Risk Management adjusters be completely familiar with the provisions of this statute and Rule 4.1 of the Arizona Rules of Civil Procedures. *Reference exhibit: AG Handbook in Section 7- Litigation.*

3.1.2. Requirements of a Valid Claim A.R.S. § 12-821

In summary, the following is required to file a claim against the State or State employees:

- The claim must be filed with the State Attorney General (Rules of Civil Procedure 4.1h).
- The claim must be filed within 180 days (A.R.S. § 12-821.01) after the cause of action accrues.

As per A.R.S §12-821.01, Authorization of claim against a public entity or public employee:

- Persons who have claims against a public entity or a public employee shall file claims with the person or

persons authorized to accept service for the public entity or public employee as set forth in the Arizona rules of civil procedure within one hundred eighty days after the cause of action accrues. The claim shall contain the facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed. The claim shall also contain a specific amount for which the claim can be settled and the facts supporting that amount. Any claim which is not filed within one hundred eighty days after the cause of action accrues is barred and no action may be maintained. *Reference exhibit: Notice of Claim Statute memo in Section 3- Statutory Defense.*

- If the claim is reported more than 180 days, but less than 210 days from the date the cause of action accrues, a supervisor must review the file before the claim is denied. *Reference exhibits: Hinds memo 12-30-96 and AG memo 7-16-98 in Section 3- Statutory Defense.*

3.1.3. Administrative Remedies

A.R.S. § 12-821-01C, states:

" Notwithstanding subsection A, any claim which must be submitted to a binding or nonbinding dispute resolution process or an administrative claims process or review process pursuant to a statute, ordinance, resolution, administrative or governmental rule or regulation, or contractual term shall not accrue for the purposes of this section until all such procedures, processes or remedies have been exhausted. The time in which to give notice of a potential claim and to sue on the claim shall run from the date on which a final decision or notice of disposition

is issued in an alternative dispute resolution procedure, administrative claim or review process. This provision shall not be construed to prevent the parties to any contract from agreeing to extend the time for filing such notice of claim."

3.1.4. Dealing with Claimant Before Filing of a Valid Claim

It is important for each adjuster to be very conscience at all times of whether a "valid claim" has been filed on cases to which they are assigned. If a claim is received which has not been properly filed but the 180 days in which to do so has not yet run, the adjuster should neither accept or deny the claim.

The adjuster should avoid protracted dealings with either a claimant or claimant attorney who has not yet filed a proper claim. If the adjuster is dealing with either a claimant or their attorney right up to the time limit to file a proper claim has elapsed, then denies the claim based on a failure to file within 180 days, the State will have a more difficult time in barring claimant from filing suit. The claimant could argue that they where mislead by the adjuster.

The provisions of A.R.S. § 12-821.01 do not apply to any actions properly filed in Federal Court such as civil rights claims.

(A:\LIA8\ 12-821)

3.1.5. Guidelines for Application of Claim Statute and Statute of Limitation

DATE OF LOSS	NOTICE OF CLAIM	STATUTE OF LIMITATION
Pre-7/18/91	Yes	Barred unless filed within 2 years from loss date; not revived by change in the law
7/18/91 - 7/17/92	Yes	Extended to 7/17/94
7/18/92 - 7/16/93	Not unless suit filed	Extended to 7/17/94
7/17/93 - 7/16/94	No	One year from loss date prior to 7/17/93
7/17/94 - Present	Within 180 days	One year from loss date

For cases involving minors or incapacitated persons research statutes and/or current case law.

3.2. Absolute Immunity A.R.S. § 12-820.01

3.2.1. Introduction

An absolute immunity is defined as an exemption from liability without conditions.

The statute provides absolute immunity for a number of different functions. All adjusters must be familiar with the provisions of this statute. Quite often Risk Management is presented with claims which fall into one of the areas covered by this statute. Thus the adjuster must not accept a claim, even though there may appear to have been some negligence on the part of the State or one of its employees if the alleged negligent act falls under the protection of this statute.

A detailed discussion of each area covered by this statute will not be under taken at this time, but in summary the two general areas of liability covered by this immunity are:

- Exercise of judicial or legislative function.
- The exercise of an administrative function involving the determination of fundamental governmental policy.

(A:\LIAB\ 12-82001)

3.3. Qualified Immunity A.R.S. § 12-820.02

3.3.1. Introduction

A qualified immunity is defined as a conditional exemption from liability.

A.R.S. § 12-820.02 (A:\LIAB\ 12-82002) provides immunity for public entities and employees in a number of different

situations. The condition attached to this qualified immunity is that there must not have been intent to cause injury or gross negligence on the part of a state employee. Gross negligence is defined in Blacks Law Dictionary as "highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger is apparent."

Again the adjuster must be familiar with each area provided protection by this statute. Any claim filed in which the alleged negligent act falls into one of the categories covered by this statute, the adjuster must evaluate the charges of the claimant showing intent to cause injury or gross negligence on the part of the state.

The statute provides protection to the state in a number of circumstances relating to prisoners, probationers, parole's, aggressive/intoxicated drivers, etc. The adjuster must review the applicability of the provisions of this statute on any claim against the state in which the injury or damages arises out of the activities of an inmate, parolee, probationer, etc. *Reference exhibit: Acevedo v. Pima County(COA) & Acevedo v. Pima County (AZ Sup.Crt.) in Section 2- Coverage.*

This statute further immunizes the state for issuance of or failure to revoke or suspend any permit, license, certificate, approval, order or similar authorization. Thus, any claim in which the state negligence relates to a "licensing" function the adjuster must consider the applicability of this statute.

3.4. Affirmative Defenses

3.4.1. Introduction

A.R.S. § 12-820.03 provides an additional affirmative defense. An affirmative defense is defined in Blacks Law

Dictionary as “a matter constituting a defense; new matter which assuming the complaint to be true, constitutes a defense to it.” Affirmative defenses, whether statutory or through common law much be raised in the responsive pleading (answer).

This statute provides a defense to “Highway Design” claims made against the Arizona Department of Transportation. All adjusters must be aware of this defense when investigating claims of this type. The key to determining the applicability of this statute is obtaining the as-built plans and the construction standards in effect at the time of the construction. Those documents should then be analyzed by either an ADOT engineer or independent engineer to determine whether the roadway or structure in question conformed to the standards at the time it was built. If it was, an affidavit from the engineer can be used in a motion for summary judgement.

(A:\LIAB\ 12-82003)

3.5. Punitive & Exemplary Immunity Damages A.R.S. § 12-820.04

3.5.1. Introduction

This statute simply states that neither a public entity nor a public employee acting in the course and scope of employement is liable for punitive or exemplary damages. (A.R.S. § 12-820.04 & A.R.S. § 41-621 K) Punitive damages are damages awarded to punish or make an example of the defendant.

A.R.S. § 41-621 P gives the director of the department of administration the authority to pay <u>all</u> damages for which an officer, agent, or employee becomes legally

responsible, if it is determined the party was within the course and scope of employment.

The adjuster must be aware that while punitive damages cannot be awarded against the state, a jury may well expand the compensatory damage award in an aggregated liability situation in an effort to penalize the state. Therefore, the punitive aspects of a case cannot simply be ignored as a result of the protection provided by this statute.

(A:\LIAB\ 12-82004)

3.6. Other Immunities A.R.S. § 12-820.05

3.6.1. Introduction

Subsection A of this statute simply states that any other immunities developed in common law or established by other statutes or the constitution of the state are not affected by the immunities created in this statute.

Subsection B provides immunity to the state for felonious acts of a state employee unless the state knew of the public employees propensity for such actions. *Reference exhibits: State v. Shallock & State v. Heinz in Section 2 - Coverage.*

The adjuster must also be aware that additional immunities for specific agencies may exist. Therefore, the adjuster must research the statutes and Rules and Regulations that apply to the specific agency involved to determine the existence of any additional immunity.

3.7. Venue A.R.S. § 12-822

3.7.1. Introduction

This statute simply allows the state to change the venue of any case filed in state court to Maricopa County: In most cases it is beneficial to do so, however consideration of the type of case and the impact on juries in different jurisdictions should be considered. For example; consideration to leaving a "Black Ice" case in Coconino County should be considered as jurors living in snow and ice country might better understand the issues.

(A:\LIAB\12-822)

3.8. Immunity A.R.S. § 41-621

3.8.1. Introduction

- A.R.S. § 41-621I. provides personal immunity for state employees or agents acting in good faith, under the authority of an enactment that is later declared unconstitutional, invalid or inapplicable.
- A.R.S. § 41-621J. provides personal immunity to state employees or agents for injury or damage resulting from the act or omission in a public official capacity where the act was the result of an exercise of discretion vested in the individuals.
- A.R.S. § 41-621K. provides immunity from punitive damages awards (See also A.R.S. § 12-820.04).

(A:\LIAB\41-621)

3.9. Land/Recreational Use A.R.S. § 33-1551

3.9.1. Introduction

This Statute states that the owner of land does not owe any duty to a recreational user of the land to keep the premises safe for such use and this includes no liability for any injury to persons or property caused by any act of a recreational user. Recreational user is defined in the statute.

The statute is very useful in defense of claims arising out of the use of State lands for recreational uses. *Reference exhibit: William Dickey v. City of Flagstaff April 2003 in Section 3 - Statutory Defense.*

(A:\LIAB\33-1551)

3.10. EXHIBITS: STATUTORY DEFENSE

A. Notice of Claim Statute Memo

B. Frank Hind's Claim Denials Memo

C. Dickey v. City of Flagstaff

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Dickey v. City of Flagstaff (C)

Frank Hind's Claim Denials Memo (B)

Notice of Claim Statute Memo (A)

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4. Excess Coverage Claims

4.1. Notice to Excess Insurers

4.1.1. Introduction

The excess insurer, having been notified of a loss, is concerned with understanding the claim, in following closely all aspects of the investigation of the loss, the handling of the claim and any litigation. We must recognize the right, and the need, of the State's excess insurers to be totally aware of all relevant and material developments regarding the reported claim, the litigation, and the settlement opportunities.

The purpose of this segment of our Manual is not to present a dissertation on the Rights and Duties of the Primary and Excess Insurers; the purpose is to set forth the procedures by which we will meet the duty of good faith to the State's excess insurers in the event of an Occurrence, Claim, or Suit.

Each Excess Liability policy issued to the State of Arizona is unique in its requirements as to Notice in the event of an Occurrence, Claim, or Suit which is likely to involve the excess insurer. The adjusting staff must therefore, be familiar with the requirements as to Notice of the State's excess insurer(s) at interest in our losses; if there is any question relating to the requirements as to Notice of a specific insurer, contact the Insurance Unit, Risk Management Division, at once for resolution.

The assigned adjuster may not, and must not, simply assume that the State's exposure to loss in excess of its "Self-Insured Retention" is protected by the existence of one or more excess liability insurance policies. As stated

above, the policies are unique; the language of the applicable policy/policies must be reviewed and particular attention directed to any policy Exclusion. If any question develops relative to Coverage under our excess policies, the assigned adjuster is to notify the Supervisor immediately, who will resolve the issue via consultation with the Claim Manager, Risk Manager and Insurance Unit. *Reference exhibit: Policy Summary Chart in Section 4 – Excess Coverage.*

Reserved for future use : Insurance Policies available online.

4.1.2. Recognition of Losses Subject to Notice

There are typical factual loss situations which present themselves in claims asserted to the State; we should recognize immediately the ultimate potential exposure to the State which is inherent and the need to Notice the State's excess insurers. There are specific serious injury claims, basic in casualty claim handling, which should alert the assigned adjuster to give Notice to our excess insurer; a serious injury claim is:

1. A fatality.
2. Any of the following:
   - Brain or brain stem injury.
   - Major extremity amputation.
   - Paralysis of any part of the body.
   - Severe burns or serious disfigurement.
   - Blindness.
   - Heart attack.

The seriousness of the injury is not, however, the sole determining factor as to whether a loss is subject to Notice to our excess insurers. We have established specific Mandatory Requirements as to providing Notice to our excess insurers and have set forth procedures, which will ensure we will meet those requirements.

4.1.3. Excess Reporting: Notice of Loss to Excess Insurers

1. Submit a notice of loss to the excess carrier as required by the policy.

2. Upon receipt of a notice of occurrence or claim involving injuries of a fatal, permanent, and/or long term disability nature, consideration should be given for the submission of "Notice of Loss" for each of the State's excess insurers at interest.

   - Original of Notice form is sent to each insurer, attaching all relevant/material claim documents then available.

   - Copies of Notice form are distributed per the "cc" designation to include the RM Insurance Unit and the Insurance Broker.

3. Unless otherwise specified by the policy, the "Notice of Loss" is submitted, on an existing claim file, if any one of the following criteria are met:

   - Summons and Complaint has been served and reserves exceed 50% of the State's self-insured retention.

   - The claim file reserves exceed 50% of the self-insured retention.

- A settlement demand has been made by the claimant, and/or their representative, which exceeds the self-insured retention.

    i. A copy of the original notice of claim form is sent to each insurer of interest, attaching relevant materials and claim documents available.

    ii. Copies of the excess notice letter are distributed per the "cc" designation to include the RM Insurance Unit and the Insurance Broker.

4. The assigned adjuster is responsible to obtain confirmation that the Notice of Loss was received by the excess insurer(s). We must have information from the insurer(s) which provides its identity, its representative, mailing address, contact person, phone number, and assigned claim number.

5. The assigned adjuster must ensure that Notice of an Occurrence, Claim, or Suit is directed to <u>all</u> insurers within the coverage layer, essential to cover the entire exposure without regard to liability.

6. <u>*Reserved for future use:*</u> ENVISION excess notice provisions.

4.1.4. Status Reports to Excess Insurers

1. Periodic reports must be made to our excess insurers which advise as to our claim investigation and claim valuation; any material case developments which revise our claim evaluation must be relayed immediately to our insurers.

- Inquiries from our excess insurers require a prompt and detailed response.

2. In the event of Suit, and selection of Counsel -- either Outside Counsel or In-House Counsel -- the assigned adjuster will advise our Counsel in writing as to the following:

   - Notice of Loss has been given the State's excess insurer(s).
   - A copy of all material correspondence relating to the case is to be sent to the excess insurer(s).
   - Provide counsel with the name, address, assigned claim number, and contact person of each excess insurer at interest.
   - A copy of each Status Report and/or Quarterly Report is to be sent to the carrier through which our excess liability coverage was written.
   - Provide counsel with the name, address, and contact person of each carrier at interest.
   - Notice counsel that any attachments to a Status Report and/or Quarterly Report need not be sent to the Broker at interest.
   - Risk Management is to be advised as to any communication on the case at issue initiated by the excess insurer with State's Counsel, or by State's Counsel with the excess insurer(s).

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4.2. EXHIBITS: EXCESS COVERAGE CLAIMS

A. Excess Policy Information

B. Reserved for: "Envision coding for notices to excess carrier"

ALPHA LIST

DEPARTMENT OF ADMINISTRATION
LIABILITY MANUAL

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5. Investigation

5.1. General Investigative Guidelines

5.1.1. Introduction

The investigation of a claim is the means by which facts and evidence are gathered and relevant information is compiled. The primary purpose of the Liability claim investigation is to develop sufficient information to allow the adjuster to make appropriate decisions as to the disposition of the claim. The depth of the investigation will vary with each claim. The adjuster must decide how detailed an investigation is warranted based on the complexity of the issues and the value of the claim. Even though the depth of the investigation will vary from case to case, there are basic investigative steps that must be followed.

For bodily injury, personal injury, and property damage claims where the potential for comparative negligence exists, the following investigative guidelines apply:

- Document a summary of the State employees' interview. Recorded Statements are <u>not</u> taken from State employees.
- Document a summary of the claimant's interview or statement, (May include supporting documents).
- Obtain police reports on all claims where one exists
- Document site investigations. (May include photographs and/or measurements).

In order to provide the best possible service to the agencies we represent and to persons filing a claim

against the State, the following standards are to be adhered to:

- Initial contact with the involved agency, board, or commission is to be made within 48 hours of assignment of the claim.
- Initial contact with an unrepresented claimant is to be made within 48 hours of assignment of the claim. (This does not apply to Inmate Civil Rights claims, Property claims, Pre-claims, EEOC claims, or other unusual situations.)
- File Summary Report , when applicable, is to be completed within 120 days or less from the time of the assignment of the claim. Reference File Summary Section 5.8.2.
- Status reports are to be completed periodically after the completion of the file summary report. Reference File Summary Section 5.8.2.

5.1.2. Compliance with Claim Statute

All liability claims against the State must be filed in compliance with A.R.S. § 12-821.01.

This statute requires that all claims be filed with the State of Arizona/Office of the Attorney General within 180 days after the cause of action accrues. If any of the provisions of the claims statute are not met *(Reference exhibit: Statutory Immunity in Section 3 – Statutory Defense)* the assigned adjuster is to proceed as follows:

- A standard contact letter (Reference Form Letter CLMNOT) may be sent to an unrepresented claimant advising of the defect in the claim. The adjuster may

then proceed with setting up the file and beginning the investigation. No settlement discussions are to occur, nor is the claim to be denied until the claim has been properly filed. The adjuster must be very careful not to lead the claimant to believe a claim is being considered if it has not yet been properly filed.

Notice of claims, filed by an attorney, that are not filed properly are to be returned to the claimant attorney using the appropriate standard document (Reference Form Letters). The file is still to be set up and the investigation initiated.

If a loss report is received from a State agency and it is obvious after some investigation that a third party was injured as a result of the negligence of a State employee, the adjuster is to discuss with the supervisor whether contact should be made with the injured party even though a Notice of Claim has not been filed. To ignore injured parties when it is clear the State is responsible is not good claims handling practice and will, in most cases force that claimant to seek legal counsel. In this situation, a proper notice of claim is still required.

ALL CLAIMS RECEIVED THAT HAVE NOT BEEN FILED IN THE 180 DAY PERIOD ARE TO BE DENIED IN WRITING. (Exception – Reference exhibit: Hinds Memo in Section 3 - Statutory Defenses).

(See Forms Book for denial letters)

5.1.3. Involvement of the Litigation Management Section (LMS) During the Investigation Phase

A LMS attorney may be assigned to monitor the claim. The LMS attorney is available to provide assistance if needed.

On claims involving large exposure or complex issues, the monitoring attorney should be consulted and a plan of action developed. The attorney assigned to monitor the claim, in most cases, will be assigned to defend the lawsuit should that occur.

5.1.4. Independent Adjuster Assignments

If the assistance of a staff investigator or an independent adjuster is required to complete the investigation of a claim, the adjuster must complete an Independent Adjuster Assignment Sheet and seek authority to assign the case from their supervisor. *Reference exhibit: Independent Adjusters Assessment Sheet in Section 5 – Investigations.*

The State maintains a list of approved vendors on contract for use. However, the staff investigator should be utilized whenever possible. All assignments to independents or staff investigators are to be limited only to those activities the Risk Management adjuster is unable to accomplish. Specific instructions should be given to the independent to avoid incurring any unnecessary expense. Independent adjuster reports should follow the Claim Evaluation/Investigative Report format. *Reference exhibit: Claim Evaluation/Investigative Report in Section 5 –* Investigations.

All reports from independent adjusters on liability claims are to be addressed and sent to the Attorney assigned, Litigation Management Section, with a copy to the Risk Management Adjuster assigned. The originals of all attachments (photos, diagrams, documents, etc.) are to be sent to the Risk Management adjuster. This is necessary so that the adjuster can appropriately evaluate the material.

The independent adjusters are to use the "Claim Evaluation/Investigation Report format on all liability claims. The initial report should list all of the captions on the claim evaluation guide. If there are captions that do not apply due to the nature of the claim or because it is outside of the scope of their assignment, the independent adjuster should note this in the report. If the independent adjuster is unable to complete any captions because the investigation is not yet complete, this should be noted and a supplemental report submitted when the work is complete.

5.1.5. Locating Witnesses

From time to time it is critical to contact a witness whose whereabouts are not readily known. In those circumstances there are a number of resources available, including the Staff Investigator, to assist in locating the witness such as:

- Voter Registration Records at the County Election Department.
- County Recorder.
- County Assessor.
- Clerk at the Court.
- Coles, Polk's and Mountain Bell Directories.
- U.S. Post Office (Forwarding Address).
- State Library and Archives List of Household Address Maricopa County Old Newspapers.
- Subpoenable Sources.

- Motor Vehicle Division Drivers License Auto Registration. *Reference exhibits: MVR Procedures and MVR Request Form in Section 5 - Investigations.*
- Internet Resource Guide. *Reference exhibit: Internet Resource Guide in Section 5 - Investigations.*
- The Motor Vehicle Division (MVD) is an excellent source in attempting to locate witnesses. If it is learned from a vehicle/drivers license search (or some other source) that the witness is out of state, MVD can query most states for drivers license or vehicle registration. From that information an out of state address might be obtained.

To request information of this nature follow the MVR Procedures. Included with the request should be a very brief synopsis of the reason the information is being requested and our file number. The specific information about the individual you are attempting to locate should include:

- First, middle and last name.
- Date of birth.
- Physical description.
- Vehicle Identification Number (from Arizona Registration).

5.2. Diary for Review of Claims

5.2.1. Introduction

To ensure maximum control of case developments it is necessary to review claim files on a periodic basis. This is accomplished by the use of the to-do/diary date on the

Envision system. The purpose of the to-do/diary date system is to make sure claim activities are accomplished in a timely manner and documented in the file.

5.2.2. Next Review Date

1. Procedure

   - When a new claim is set-up, clerical will set the initial adjuster to-do/diary review date for 5 days and the supervisor to-do/diary date for 90 days.
   - Each adjuster can obtain a to-do/diary list from Envision for files diaried for a specific, day, week, or month.
   - When the file review is complete, a new to-do/diary date should be entered on Envision for proper follow up.

2. Purpose

   - To ensure prompt initial claimant contact and follow-up, contact is made when promised or is appropriate.
   - Investigation has been (or is being) completed on a timely basis; all pertinent facts have been obtained.
   - Reports, documents and correspondence are up-to-date and represent the current status of the claim.
   - Plan of action is being effectively followed through.

3. Frequency

   – The adjuster may review files as frequently as needed. The timing should be based on the particular circumstances in the individual case.

5.3. Evidence

5.3.1. Introduction

Evidence is data which is used to prove or disprove a supposed fact. Evidence must be relevant, be material to the issues and have been developed from a competent source.

There are three categories of evidence:

- **Oral** -- Oral evidence is the testimony of a witness as to the facts within their knowledge.
- **Documentary** -- Documentary evidence may take the form of books, publications, papers, reports, public and private records, and any number of other such materials.
- **Demonstrative** -- Demonstrative evidence visualizes the testimony in the form of photographs, diagrams, motion pictures, scale models, diagnostic tests, demonstrations, or other physical objects.

5.3.2. Preservation of Evidence

Of equal importance with the securing of quality evidence is the preservation of that evidence. The following guidelines should be followed for safely storing and presenting evidence:

- Evidence must be kept in a safe place where it can be readily located when needed. This evidence should be stored by Risk Management, our defense attorney or with a commercial storage company.
- It must be clear that there has been no change or modification in the evidence between the time it was acquired and is presented. The custodian of the evidence must be identified and available to testify to the fact that it has not been changed or modified. If the evidence passes through several custodians, all must be appropriately identified and dates of changes noted.
- Evidence must be properly marked for identification and properly stored. Witnesses may be called to testify regarding the chain of custody.

5.4. Photographs

5.4.1. Introduction

There are several advantages to using photographs as an additional investigative tool:

- Photographs can clarify confusing or ambiguous facts surrounding a claim.
- Preserving the scene of the accident (in order to adequately preserve the scene, photographs must be taken as close to the date of the accident as possible).
- Provide a tool for counsel to use in trial, should the case get to that point.

5.4.2. Types of Cameras

The claims section of Risk Management has two types of cameras available:

- Auto focus 35mm with built in flash.
- Digital Cameras- Adjusters should consider attending the digital photography class offered by Loss Prevention.

Reserve for future use: Digital Photography Chain of Custody Procedures.

All cameras are kept in a central location in the RM Claims Section.

5.4.3. Photographing Accident Scenes

There is a definite methodology for photographing streets in Auto v. Auto or Auto v. Pedestrian type accidents. The following are certain points that should be remembered when photographing an auto accident scene:

- Photos should be taken showing the accident scene from the perspective of both parties involved. This entails taking photographs from the streets where the parties were located immediately prior to the accident. It is best to obtain these photographs from the lane of the street, in which the vehicles were traveling as opposed to taking the photographs from the sidewalk, if possible.
- Generally, a set of photos from one party's perspective of the accident scene should include shots from 50 feet away from the accident scene or the intersection if applicable, 100 feet away and 200 feet away.

- Panorama shots should be used in order to include the full scene where the camera could not possibly encompass the entire scene in one photograph. Panorama shots are those shots in which two or more photographs can be placed side by side to form one continuous picture. Panorama shots should be taken carefully so that the separate photographs line up properly.
- On claims in which it is alleged that the State (ADOT) contributed to an accident due to the improper design, maintenance, etc., of a roadway, all signs and roadway markings in the area should be photographed as well as the roadway and shoulder areas to show the condition of the surfaces. The allegations contained in the claim as well as the adjuster's experience will dictate what additional photos will be necessary.
- When photographing an accident scene, it is best to take sufficient sets of photographs from the same locations. This will avoid the necessity of having to return to the same location later to retake the photographs.

5.4.4. Photographing Slip and Fall Scenes

In photographing the scenes of slip and fall accidents it is best to first obtain an overall identifying shot in order to provide the viewer of the photographs with a perspective of the accident scene. Next, photographs of the specific accident scene should be taken from all possible angles. Close ups should be taken of any defective flooring or the other problems which may have caused or contributed to the slip and fall.

5.4.5. Photographing Automobiles, Machinery or Equipment

When photographing cars, machinery or equipment, it is best to first obtain overall identifying shots. With automobiles this may include shots which show both the front and rear of the vehicle as well as both sides and which specifically show the license plate numbers, or the 8-point photo method. These overall shots can also reveal other damage on the vehicle.

Reference exhibit: 8-Point Photo Method Diagram in Section 5 - Investigations.

Distance shots of the damage to the vehicle or the machine should be taken so that a perspective of the damage can be obtained by the views. Close up shots of all damage should be taken.

With machinery or equipment, a photograph of all controls might be helpful, especially where the machine was responsible for injuring the claimant. Photographs showing someone standing at the controls of the machine could also prove helpful. It is also advisable to photograph any serial number, model numbers or manufacture labels located on the equipment or machine. Warning labels should also be photographed.

5.4.6. Photographing Humans

Photographing humans is generally somewhat difficult, especially if you are photographing for injuries. Normally, it is best to get the person into the best light possible to ensure a good photograph.

An overall shot of the person showing the injury is good for identification purposes. Close ups should be taken of the

injuries. The subject of the photograph should not be made to pose dramatically.

5.4.7. Mounting and Labeling of Photographs

All photographs are to be mounted on photo mounting sheets and all information concerning the photo completed. *Reference exhibit: Photo Mounting Sheet in Section 5- Investigations.*

The negatives/floppy discs/cds should be safeguarded in the file by placing them in a sealed envelope and securing them to the file folder. The envelope should be labeled so that the negatives can be readily identified. This is important in case additional prints or blow ups have to be made.

5.4.8. Arizona Department of Transportation Photo Logs

The Traffic Engineering Section of the Arizona Department of Transportation maintains a photo log of highways throughout the State of Arizona. Ground and airial photographs and video may be available and used as a resource in the investigation and defense of claims against Arizona Department of Transportation relating to design and maintenance of a highway. The photo log is periodiacally updated. To request a viewing of the log(s) contact ADOT Risk Management. Copies can made if necessary.

Reference exhibit: Memo on Photo/Video Logs in Section 5 – Investigation.

5.4.9. Police Photographs

On all claims involving auto liability the photograph taken by the Law Enforcement Agency that investigated the accident should be obtained. This is generally done by mail In the Phoenix Office, local requests should be given to the clerical staff to obtain. There is generally no charge made by local agencies to the State for these photos. If the accident was investigated by the Department of Public Safety, their request form must be completed and submitted. There is no charge to Risk Management for photos from the Department of Public Safety. (Reference Form Letters).

5.4.10. Aerial Photos

Aerial photos of most locations on State highways are available from photogrammetry and mapping services at the Arizona Department of Transportation. In addition, the Arizona Department of Transportation is available to fly to specific locations and may take the necessary aerial photographs upon request. There are also private companies in the Phoenix area that can provide the same services.

When aerial photos are to be used, consideration should be given to the size and scale that would be best for use in a courtroom. Plastic overlays for drawing on can be ordered with the mounted aerials.

5.5. Diagrams

5.5.1. Diagramming Accident Scenes

In addition to photographing an accident scene, it is often important to diagram the accident scene. This allows

someone who is reviewing or has just picked up the file to obtain a clear understanding of the way the scene is laid out. Adjusters should consider utilizing the Staff Investigator to conduct a scene investigation. Diagrams should be tailor made to each specific accident scene and should be drawn to scale. In order to accomplish this, it is necessary to measure the accident scene.

Every possible angle and line should be measured, constantly keeping in mind your later task of reducing the measurements to a drawing. It is better to take more measurements than are needed than to take less.

In diagramming intersection accidents, sometimes, it is only necessary to measure the intersection. At other times, it may be necessary to not only measure the intersection, but also one or more of the streets leading to the intersection to account for factors that may have contributed to the accident.

When beginning the measurements, it is first necessary to take all outside dimensions so you can draw the outside dimensions of your diagram. Inside dimensions can be taken to add in the details of the drawing. It is helpful to make a rough drawing of the intersection when you first arrive and then label the various details of that rough drawing with your measurements. This will help you picture the type of measurements necessary to draw the accident scene.

You must measure all dimensions in straight lines. This sometimes requires some estimation, especially in situations where two streets may not meet at a point, but rather are connected by a curve. This is a common occurrence.

After obtaining the measurements of the accident scene, it is necessary to transform those measurements and your rough drawing into a clean and legible final diagram. The following points are helpful in accomplishing this:

- When preparing the diagram, it is best to use adjuster templates. These templates contain many different forms and scales so almost any type of drawing can be made.
- Your diagram should be to scale. This means one foot of actual distance must correspond to some set distance on your ruler or template. For instance, you may decide that 1/16th of an inch should represent one foot or the subject you are diagramming is small enough so 1/4 or 1/2 of an inch can represent a foot.

5.6. Investigation Outlines

5.6.1. Introduction

This section of the manual is intended to provide basic outlines to be used as reference during the investigation of liability claims submitted to Risk Management. The outlines cover:

- Auto Liability Claims.
- General Liability.
- Premise Claims.
- Construction Site Claims.

These outlines are not all inclusive but should be a useful tool in the investigation of most claims.

5.6.2. Investigative Outline – Auto

5.6.2.A. Claimants

1. Personal Data
   - Name, address, telephone number
   - Date of Birth
   - Occupation, earnings, employment record
   - Marital status and number of dependents
   - Accident and health record
2. Accident
   - Date, time and location
   - Detailed narrative description of nature and cause
   - Witnesses
   - When and to whom reported
3. Injury and Disability
   - Detailed description of injuries
   - Treating physician and hospitals
   - Date disability began and ended
4. Expenses incurred and anticipated
5. Personal appearance

5.6.2.B. State Employees/Agents/Volunteers/Students

1. Personal data of State employees involved
   - Name, address, and telephone number

- Date of Birth
- Occupation
- Marital Status
- Disabilities/Limitations

2. Volunteers/Students

   - Additional medical or accidental death and dismemberment coverage may be available. Reference exhibits: Volunteer Medical Insurance Policy Summary in Section 2- Coverage; and A.R.S. § 23-901.6.

3. Accident Scene

   - Verify if any State, County or Municipality video cameras are in place and if the video tape is available.

4. Pre-accident condition

   A. Streets, roads & highways

      - Type of area; example: city limits, county
      - Type of pavement
      - Direction
      - Number of lanes
      - Type of divider between lanes
      - Angle of intersection
      - Intersecting roads or streets
      - Percentage of grade

- Degree of curve
- Width of street
- Type of shoulder
- Wet, slippery, icy, rough, bumpy, rutted

B. Traffic controls

- Location of signals, stops signs, speed limit signs, or other
- Time interval of red, yellow and green lights
- Signals of officers, if present
- Location of warning flares, barricades, flagmen, or other

C. Weather, atmospheric or lighting conditions

- Type of weather at time of accident (include visibility), affect on auto, windshield, etc.
- Location of street lights, highway lights, commercial or private lighting nearby, location of sun

D. Nature of traffic conditions

- Speed of other traffic
- Volume of other traffic
- Kind of traffic - autos, trucks, equipment (heavy or light), pedestrians

5. Post-accident condition

A. Location and length of skid marks

- By which vehicle
- Compare length of right skid to left
- Measure skid from well established point of reference

B. Check for photos taken by arriving witnesses

- Police or Highway Patrol
- Newspapers
- Independent photographers

C. If time lapsed between accident and investigation

- Check department of streets or highways for description of changes
- Check neighbors to the scene for photos taken showing the area at the time of the accident

5.6.2.C. Drivers/Passengers

1. Personal Data
   - Name, address, telephone number, date of birth, occupation, marital status, disabilities/limitations
   - Driver's license, restrictions, past citations
2. Legal relationships
   A. Permission
      - Express - What was said to driver? By whom? Witnesses to conversation. Purpose of trip. Any limitations?

- Implied - Use of auto before by driver. Prior knowledge of owner? Objections to use? Under what circumstances. When? Where?

B. Joint enterprise (joint venture)

- Is there a common employer?
- Agreement to form a joint venture, written or oral
- Parties to the agreement
- Is this trip in furtherance of ?
- Ownership or lease of vehicle?
- Expenses in common
- Does each party have right to control or direct vehicle?
- Is trip taken independently of the other partner?

C. Agency or employment

- Right of principal to control acts of driver
- How paid? - salary, commission, or other
- Who owned auto? Paid for gas, oil, repairs and maintenance ?
- Tools carried in the auto?
- Who pays for expenses of trip?
- Purpose of trip. For whose benefit?

D. Guest or passenger

- Nature of trip - social or business?
- Expenses shared. What specific arrangements?
- Occupants go along to help unload ?
- Was money or some other benefit paid for the trip (inclusive of sharing expenses)?
- Intoxication by driver?
- How much to drink? When? Where?
- How did they act? Speech slurred?
- How did they drive?
- What warnings or objections were made?
- Did passenger ride with driver knowing of the intoxication or impairment?
- Wanton and willful conduct by driver ?
- Excessive speed ?
- Horseplay?
- Any excessive reckless acts?
- What warnings or objections were made?

3. Factual Details of Accident

A. Time started on trip. Destination? Time due to arrive at destination?

B. Route taken and intended route?

C. Speed of auto. How determined?

D. Distance from other auto or object when first observed?

- Lane of travel? Distance from centerline, curb or shoulder
- Location and speed of other autos

E. Direction of travel. Your auto. Other auto or vehicle. Estimated speed.

F. Changes of course or speed for both or all autos

- Location at time of change of course or speed
- When and where brakes first applied? Distance traveled after brakes applied

G. Signals

- Traffic - type of signal
- Director of signals of all autos. Hand or mechanical ?
- Was horn used? When? Where? How often?

H. Point of impact

- Location. Distance from established objects such as poles, curbs, street markings
- Direction each headed at moment of impact
- Location of vehicle at first point of contact
- Speed at moment of impact - both vehicles

I. Distance traveled after impact

- Location of debris, skid marks, or other evidence of direction of travel or impact
- Location of autos after they came to rest. Measure from established markings

J. Location of passengers in each vehicle. What remarks or conversation took place just prior to impact or upon impact?

K. What driver was doing?

- Listening to radio
- Where looking
- Smoking
- Using Cell Phone
- Other

L. Physical condition of driver

- If went to sleep or blacked out, complete details of prior health - fainting, diabetes, heart trouble
- How much sleep in preceding 48 hours?
- Any warning symptoms immediately prior to accident? Any past difficulties?
- What drugs taken? How many? Under prescription? Who is doctor?
- Intoxication. Details of amount to drink
- Wearing glasses. Driver's license

- Restrictions. Hearing aLMS

M. Res-gestae according to Black's Law Dictionary is: "Things done. The Res gestae rule is that where a remark is made spontaneously and concurrently with an affray, collision or the like, it carries with it inherently a degree of creditbility and will be admissible because of its spontaneous nature".

- What was actually said (quote verbatim) or done after the accident? By driver
- Passengers. To whom said? Who overheard? Who saw?

5.6.2.D. Vehicles

1. Description
   - Make, model, year, color, black box installation
   - Load capacity, weight, length, height
   - License number and/or VIN#
   - Seat belts
   - Infant carrier or car seat
2. Ownership
   - Registration. Date of transfer
   - Name printed on vehicle title/registration
   - Bill of sale
   - Husband and wife co-owners
   - Previous owners

3. Condition at Time of Accident
   - All Lights in working order? Does model have automatic daytime driving lights?
   - Brakes - condition. Last checked. Adjusted. Relined. By whom?
   - Windshield and windows - vision obscured? Wipers working?
   - Mechanical condition of steering or other
   - Tires - condition. Age, Mileage. Where purchased? Verify manufactures specifications on driver's door (i.e. size, PSI, etc.).
4. Towing Another Vehicle
   - Type. Describe completely
   - Condition of towbar. Who installed?
   - Ownership of towed vehicle. Rented, leased. What insurance? Terms of policy.
   - Mechanical condition
   - Occupant of towed vehicle (see Passengers - Guests)
5. Damage
   - Photos (8 point photo method)
   - Estimates
   - Appraisals
   - Total Loss Value (ACV) - newspaper ads, Blue Book, on-line valuations

- Betterment - depreciation
- Old damage
    i. By claimant's statement
    ii. By expert opinion

5.6.2.E. Pedestrian Accidents

1. Claimant's Attentiveness
    - Direction of Travel
    - Alone or with another party(s)
    - Where looking? What watching?
    - Walking, running, trip, fall or stumble, riding bicycle?
    - Destination. In a hurry? Preoccupied
    - Use of electronic device, headphones or cell phone
2. Wearing Apparel
    - Color of clothing. Distinctive or blend with surroundings.
    - What carrying.? Purse, Grocery bags, packages, umbrella
    - What kind of shoes was the claimant wearing?
    - Wear contacts or glasses? Are they bifocals?
    - Wearing a hat. Did it obscure vision?
3. Location
    - Cross streets? Describe in detail the exact locaton

- In a crosswalk? Marked or unmarked
- Position when first noticed danger
- Position at impact. Where fell?

5.6.3. Investigative Outline: General Liability

5.6.3.A. All Claimants (and Witnesses)

1. Personal Data
   - Name, address, telephone number
   - Date of birth
   - Occupation, earnings, employment record
   - Marital status and number of dependents
2. Accident
   - Date, time and location
   - Detailed narrative description of nature and cause
   - Witnesses
   - When and to whom reported
3. Injury and Disability
   - Detailed description of injuries
   - Treating physicians and hospitals
   - Date disability began and ended
   - Previous accidents, pre-existing injuries or illness, and general health.

4. Expenses Incurred and Anticipated
   - Medical/health insurance carrier information
5. Personal Appearance (cover in investigative report)

5.6.4. Investigation Outline: Premises Accident

5.6.4.A. Ownership and Control

1. Entities
   - Exact name(s) of entities insured - corporation, partnership, individual
2. Location (address of premises)
   - How long occupied?
   - Lease, rental agreements - obtain copy
   - Owner (name of contractor, architect) - contract
   - Area of control - between landlord or other tenants
   - Insurers of landlord or tenants
3. Maintenance or repair
   - Who maintains - agreement to maintain - how made - oral, written?
   - Repairs - by whom - made under contract? - obtain copy
   - If employees maintain - who does - how often (be exact - hours, days, weeks)

5.6.4.B. Description of Premises

1. Photographs

2. Security Video/CCTV or Digital Recordings
3. Activity on Premises
4. Commercial establishment
   - Areas, routes and alternate route for traffic
   - Restricted areas for customers
   - Direction or warning signs posted - how sign reads - size of letters, etc.
   - Floor plan
   - Type of construction - general state of repair
   - Violation of building codes, safety codes
5. Residential
   - Floor plan
   - Type of construction - general state of repair
   - Violation of building codes
   - Location of furniture, rugs, etc., if applicable

5.6.4.C. Reason for Claimants Presence

1. Trespasser - no permission to enter
   A. By what means was permission refused?
      - Posted signs
      - Oral refusal
      - Place closed for business
      - Fenced - condition, adequacy

- Locked
- Guarded - by whom? Contractual agreement between parties?

2. Attractive Nuisance
   - Date of Birth of claimant
   - What object attracted - how long on premises?
   - Measures taken to prevent access – cost
   - Presence of children likely
   - Previous accidents with object
   - Previous trespasses by children
   - Object visible from outside
   - Is object dangerous to children?
   - What warnings to children?
3. Licensee
   - Visit as social guest. Who invited, what purpose?
   - Talk with insured
   - Been there before - when, how often?
   - Door-to-door canvasser
   - Loiterer
4. Invitee (Business Visitor)
   - Customer - buy anything - looking for something to buy?
   - Salesman - selling what - invited by assured?

- Servicing premises?
- Public official in the line of duty?
- What benefit to assured by this visit?

5.6.4.D. Notice of Defect or Conduct

1. Claimant's Knowledge (constructive notice)
   - Been there before - how often - daily, weekly, monthly - when last
   - Observed defect before?
   - Complained before - when, to whom?
   - Previous accidents - knowledge of
2. Notice to Claimant (actual)
   - Notice given orally, by sign or warning - by whom, when, where?
   - Barricades, fences, locked doors or gates, guards?
3. Owner, Leasee, or Leasor Knowledge of Condition
   - Defect obvious?
   - Hidden defect - what inspection done to find?
     i. Who inspected - when, how often?
     ii. How expensive to discover?
     iii. Scientifically impossible - by whose opinion?
   - Knowledge of previous accidents - how many?
   - Knowledge of activity which would produce defect?
     i. What done to discover defect?

5.6.4.E. Possible Causes of Accidents

1. Floors
    A. Location of accident - photograph
    B. Type of construction - e.g., terrazzo tile, wood, concrete, marble, etc.
        – Obtain plans
        – Sloping - percentage of grade, length of slope
        – Smooth - rough
        – Color
    C. Condition of floor
        – Wet - cause of condition - over what area
        – If washed, soapy - soap obvious?
        – How far from entrance was condition?
        – Rainy day?
        – See a bucket - mop?
        – See a janitor working?
        – Change in color?
2. Waxed or Oily
    – When waxed - by whom?
    – Type of wax - printed brochures describing product
    – How much applied?
    – Chemical analysis

- Friction tests
- Floor sticky - slippery?
- If oily, spot obvious - color and size of spot

3. Rugs or coverings
   - Rumpled or wrinkled - how long?
   - Non-slip mat underneath - dimension?
   - How much traffic over rug?
   - Texture of rug - wool, nylon, linoleum
   - Defect, tear (how long, how deep), worn (what area of wear, how obvious, what color?)
4. Foreign debris - type of viscosity, size, texture, color area covered?
5. Cracks, holes, depressions
   - How wide, how deep, how long?
   - Cause - faulty construction, insured's activities, other
6. Obstruction - is it normal for the area?
   A. If not, how large; what color?
   B. Other conditions affecting floors
      - Lighting - number and location of lights
      - What is foot-candle reading?
      - Location of counters, displays, desks, other

C. Claimant's story

- What kind of shoes - how high heels?
- Trip, slip or turn ankle - which foot?
- Did they see on shoe - wax, debris, water, soap, oil - where on shoe
- Any debris on clothing - where, color, amount?
- Lose balance
- What carrying - packages, bags, etc.?
- Eyesight – contacts or glasses, wear bifocals - how long?
- Preoccupied - what with?

7. Stairs and Handrails

A. Total length and height of stairs

- How many steps
- Length, width and depth of each step - all equal in dimensions?
- Height of rail or banister
- Rail firm or loose - method used to secure rail
- Stairway curved or straight?
- Location and dimensions of landings

B. Construction

- When built? What building code in effect then?
- Contractor who constructed

- Materials used in construction - wood, marble, etc.
- Any alterations - when, what contractor, building code in effect then?

C. Condition of stairs (Refer to Condition of Floor)

- Type of abrasive used
- Type of nosing (describe edge of step)
- Type of covering or runner

D. Use of stairs -public, emergency exit only, etc. -

E. Claimant's story (refer to Claimant's story in "Floors" section above).

- Which step - between which floors?
- Reach for handrail - have hand on it - if not, why not?

8. Doors

A. Opening wrong (fell down step or stair)

- Location of door
- Signs on door - claimant see sign - what sign said
- How far step or stair from door?
- Type of door – describe type of door (wood, metal, swinging, sliding, etc.)
- How far door opens - what arc, which way?
- Lighting - both sides of door

- Claimant familiar with area - been through door before?

B. Transparent doors

- Size of door
- Location of handle
- Location of markings or other objects to delineate location of door
- Signs or lettering on door - where, how large, what color?
- Type of door - swinging, sliding, automatic, revolving if revolving, amount of pressure to move doors
- Approach to door

9. Elevator

A. Description of elevator

- Type of elevator
- Manufacturer - model number
- Total load capacity - persons, weight
- Dimensions
- Type of operation - automatic, operated by operators?
- Location in building
- Description of approach to elevator

B. Maintenance

- Inspection by State, City or County - copies of inspection
- Maintenance contract - obtain copy
- Insurer of maintenance firm - consider putting them on notice
- When last checked?
- Any complaints about operation - what done to rectify?
- What inspections after accident - contact inspector
- Previous accident record

C. Operated (manned) elevator

- Name, address and statement of operator
- Statement of other operators of same elevator
- Procedure in picking up passengers - procedure used in this case
- Experience of operator

D. Automatic elevator

- Description of controls - doors, lights
- Extent of leveling
- Statement of tenants in building as to operation
- Frequency of use by claimant

- Can door be opened when elevator not at floor?
- Can elevator be stopped, slowed or operated alternately by hand?

E. Unexpected breakdown

- Details and description of machinery involved
- Length of use - wear and tear
- Defective part - manufacturer -put them on notice

10. Sidewalks

A. Photograph as soon as reported

- Exact location of accident - take claimant to the scene
- Show claimant photograph - have claimant mark location and sign name
- Take photograph under same weather conditions as time of accident
- Include background of buildings, fences, walls, etc.

B. Description

- Material - concrete, terrazzo, etc.
- Width
- Location of driveways, fire hydrants, sidewalk, elevators, gratings, etc.
- Slope - percentage

C. Legal description
   - Location of property lines, building lines - check deeds, city maps, recorder's office
   - Easements
   - Sidewalk publicly or privately owned

D. Creation of condition
   - Vehicular traffic - who?
   - Roots cracking sidewalk - whose trees
   - Improper repair - by whom?
   - Other activities of abutting owners
   - Who constructed?

E. Defect: hole, crack, foreign object or debris
   - Size, color, texture

F. If publicly owned, get claimant to file claim with municipality - watch time limitations

G. Effort to guard or warn of condition?

H. Other conditions
   - Weather - time of day or night
      i. Ice or snow - when last snowed, when last cleared?
      ii. Any activities by insured causing ice to form - defective spouts, etc?
      iii. Snow cover ice - snow cover some defect?

iv. Rain cause mud and rocks to get on sidewalk - assureds notice

– Lighting - location of lighting - overhead, nearby - how far?

I. Claimant's story (see Floors section above)

J. Alternate path or route (where defect on sidewalk is obvious)?

– Location and description of alternate path or route (where defect on sidewalk is obvious)

– Was it obvious to claimant?

– Why didn't claimant take it?

11. Dog Bites

– Breed

– Size, color and weight

– Age

– Reputation for viciousness (check other bites or attacks)?

– Tags?

– Veterinary History (Innoculation Records)

– Canvass neighborhood

5.6.5. Investigation Outline: Construction Site Accidents

5.6.5.A. Owner Liability

1. Contractual Relationships

- Copy of contract with general contractor
- Arrangements for insurance - certificate of insurance, additional named insured, contractual coverage

2. Degree of Job Control
   - Regular inspection - if so, by whom, how often?
   - Who does inspector report to?
   - Does Inspector give instructions to contractor or subcontractors - if so, to whom, on what occasion?
   - What reports written - obtain copies
   - What progress reports by contractors - any photos?
   - Owner provided safety equipment - if so, what?
   - Owner provided any tools or material - what?

5.6.5.B. Contractor Liability

1. Contractual Relationships
   - Copy of contract with subcontractors - obtain copy
   - Contract with owner - obtain copy
   - Contract with architect or managing engineer
   - What inspections by architect or managing engineer?
2. Degree of Job Control
   - What work done by general contractor
   - What work done by subcontractors - list all subcontractors and nature of work of each

- Job superintendent's duties - specifically, responsibility for safety
- Progress reports
- Control of work schedules by subcontractors
- Violations of safety orders - What violated, knowledge of violation by job superintendent, employees
- Job cleanup - traffic
- What warnings - barricades?
- Job specifications - plans, blueprints

3. Maintenance

A. If equipment involved, who maintains

- How old?
- From whom purchased?
- Manufacturer - insurance carrier
- Was there a regular maintenance schedule - was it followed?
- Had equipment been repaired - if so, by whom?
- Any defects noted in equipment?

B. If equipment leased or borrowed, what were the lease arrangements?

- Who agreed to maintain?

C. Was the equipment the proper equipment for the job?

- If not, why not?

4. Licenses and Permits

   - What inspections made by building department, government, or governmental agencies? obtain copies
   - Was job done in accordance with the permit – obtain a copy of the permit, if pertinent
   - Were national building codes followed – if not what was done?

5.6.5.C. Subcontractors Liability

1. Contractual Relationships

   - Copy of contract with contractor
   - Copy of any other contract relating to this job including supplies and a list of materials if pertinent

2. Degree of Job Control

   - Portion of job to be done - how much completed?
   - Was any portion of contract sublet to other subcontractors - what?
   - Job superintendent or foreman - degree of control over:

     i. Work
     ii. Material delivery
     iii. Area
     iv. Safety of employees
     v. Job cleanup, traffic

5.6.5.D. Reason for Claimant's Presence

1. Member of the Public
    A. Trespasser
        - By what means was permission refused?
            i. Posted signs
            ii. Oral refusal
            iii. Place closed for business
            iv. Fenced (condition, adequacy)
            v. Locked, guarded (by whom)?
    B. Attractive Nuisance
        - Date of birth of claimant
        - What object attracted - how long on premises?
        - Measures taken to prevent access - cost?
        - Presence of children likely
        - Previous accidents with object
        - Previous trespasses by children
        - Object visible from outside
        - Is object dangerous to children?
        - What warnings to children?
    C. Licensee
        - Guest of property owner, contractor, or subcontractor

i. Who invited?

ii. What purpose?

iii. Been there before - when, how often?

iv. Canvasser

v. Loiterer

D. Invitee (business visitor)

- Salesman - selling what - invited by?
- Public Official - in line of duty?
- What benefit to owners, contractors or subcontractors by this visit?

2. Employee - Claimants (Relationship between owner, contractors, subcontractor - employee loaned by whom, to whom).

- Oral arrangement or written - if written, obtain copy of agreement
- Payroll records
- Time slips
- How paid - by whom?
- Who paid Workers' Compensation insurance premiums for employees?
- Who was employee's supervisor - extent of direction at the job
- Who gave employee orders?
- Who had the right to give orders?

- Who would fire employee?
- Who fired employee?
- Who made Social Security deduction?
- Who supplied tools and equipment?
- Was employee loaned or rented with equipment?

5.6.5.E. Common Causes of Accidents

1. Falling Tools and Debris

A. Degree of control over item

- What fell – tool or debris?
- Location from which it fell (ladder or scafford in use)
- Height from which it fell
- Where were contractors working? – get names of employees - get names of subs. What were they doing?

B. Type of item

- Tool -Description, identifying marks, if any
- Debris - description where located before fall

C. Weather conditions

- Did the wind cause fall
- Obtain weather reports

- Methods used by contractors and sub-contractors to secure item against weather,conform to safety codes?

D. Safety procedures - applicable safety codes - inspections

2. Falls

A. Scaffolding collapses

- Owner of scaffold - Insurance carrier
- Copy of lease or rental agreement if rented
- Who used scaffold - any trouble before?
- Who erected scaffold - who supervised?
- Erected in accordance with proper procedures?
- Number of trusses adequate?
- Did trusses fit hangers?
- Who braced trusses: done properly?
- Who planked scaffold - done properly?

B. Barricades or railings

- What barricades or rails installed?
- Were rails installed properly - details of method of installation in accordance with safety regulations?

3. Road Construction (Auto Accidents)

A. Refer to Automobile Liability Investigation outlines

B. Who controlled area - State, County, City, contractor?

C. Determine alleged cause or defect

D. Lack of warning

- Location of all barriers, signals, lights, etc.
- Photographs
- Who supervised placement?
- What inspections made by governmental authorities?
- Interview inspector

E. Defect in roadway

- Describe defect - location, size
- Determine cause of defect - heavy equipment, traffic, weather, other
- Photograph defect
- What inspections made by governmental authorities?
- Interview inspector
- Did contractor, the supervisor or employees know of the defect? Who?
- Was defect cause of accident or speed of driver?
- Interview witnesses, driver, or occupants of car

F. Caused by workmen or equipment

- What traffic controls - flags, flagmen, lights, flares, signs, etc.?
- Location
- Describe equipment - size, weight, etc.
- Qualification of operator - how long operated this equipment - similar equipment

5.7. Statements

5.7.1. Introduction

The purpose of statements and interviews is to preserve a record of facts as told by a witness. The statement can later be used to refresh the recollection of the witness or to impeach their testimony at the time of the trial. Statements and interviews are also used as tools in evaluating a case. No statement or oral interview should be taken from a person represented by counsel. Statements are not taken from State employees unless there is a compelling reason to do so. In most instances, a personal interview with a State employee with a written summary will suffice. Witness statements and interviews should be completed early in the investigation process.

A statement will generally be very detailed in order to rule out the possibility that testimony at the time of the legal proceeding might be broader and more damaging than was reflected in the statement. The statement should clear up and establish the parameters of the projected testimony. In order to achieve these results the adjuster should use the following techniques:

- Prepare an outline in advance or use a checklist.

- Listen attentively to all responses from the witnesses.
- Make brief notes on areas requiring clarification and re-ask the question.
- Prepare a diagram, if applicable.

5.7.2. Statement Methods

Once a decision has been made to secure a statement, the adjuster must select the appropriate method for that statement. There are basically three types of statements:

- Handwritten
- Recorded
- Telephone/recorded

Telephone statements are usually employed in the following circumstances:

- Where time and distance make other methods less practical, and where the added risk encountered by lack of face-to-face contact is not overwhelming.
- Where exposure is low to mid-range.
- Where facts are generally known and issues of liability are small, but where verification is desirable.

The advantages of an in person recorded statement over a handwritten statement are as follows:

- Less investigator time is invested in this method than for a handwritten statement.
- Legibility of handwriting poses no difficulty.

- Responses are unquestionably those of the witnesses.
- To some witnesses, a tape recorder or court reporter is less threatening than a statement pad.

5.7.3. General Statement Format

The content of statements, of course, depends on the type of claim being investigated and the type of witness. However, certain characteristics are common to all statements. Listed below are the seven key divisions of a statement:

- Introduction
- Identification
- Foundation
- Description of accident/occurrence
- Injuries/damages
- Summary
- Closing

Introduction

In a handwritten statement, the introduction section is limited to the preliminary material of the heading, the name of the witness, page number and date. In a recorded statement the following format should be used as the introduction:

"This is (your name) speaking with (name of person being interviewed) from (location) on (date and time). Are you

aware this conversation is being recorded? Do I have your permission to record this conversation?"

Under this heading, the investigator specifically identifies the witness, obtaining the following information:

- Full legal name (including verification of spelling)
- Age and birthdate
- Address (A permanent address where the individual can always be reached is desirable, in addition to the place where resides.)
- Telephone number
- Social Security Number
- Marital status
- Names, ages and relationships of dependents
- Occupation
- Employer
- Special qualifications

Foundation

In the foundation section, the investigator sets the stage for the action which will be described later. Among categories of information included are physical sites, products, vehicles, other parties, witnesses, and physical conditions other than site. It is in this section that the greatest variation occurs in format because the investigator must carefully describe the facts and location of the incident.

Description of Occurrence

In this section the action is described; the movement of the forces and interrelations of the parties act together to produce an event. Stages in the event are described in chronological sequence. Cause and effect relationships -- because of this, that occurred -- are implicit in describing accidents or occurrences.

This section should accurately reflect the perceptions and recollections of the subject. One axiom of claim investigation states: “Record the statement in the person’s own words.” To do so preserves a clear idea of what that individual would do or say if called to testify. An inaccurate statement is suspect, if not worthless, as evidence. The witness’s manner of expression should give clues to their character and personality.

The details needed to accurately describe an occurrence vary widely. Generally speaking, this section is the “How” of the statement. It should be descriptive enough that a person reading or hearing the statement can reconstruct the incident mentally, and can comprehend what happened.

Time/space relationships are crucial, particularly in establishing fault. Events contributing to the occurrence should be arranged in chronological order. Where persons are involved, this means who did what and when.

Injuries/Damage

This topic could be called “results” because it covers what happened as a consequence of the events previously described. In injury claims, fully list all complaints and conditions, eliminating those portions of the body not involved. In addition, cover prior injuries, surgeries and

illnesses. In property damage (claims), cover in detail why there has been a loss of value to the property, listing pre-accident and post-accident conditions.

Summary

In the summary, the investigator reviews the witness's testimony, clarifies uncertainties and gives the witness an opportunity to add information previously overlooked.

Closing

In this stage of the interview, the investigator secures the witness's certification of the accuracy of the statement. The standard closing that should be used on all recorded statements is as follows:

"Is there anything you would like to add to this conversation? (Pause) You are aware that this conversation was recorded and that I had your permission to do so?"

5.7.4. Statement Outlines

The questions listed in these outlines are the basis for the questioning in auto and general liability claim investigations. The adjuster should use these outlines as guides for all statements, when applicable. The basic questions must be supplemented by questions developed by the adjuster to satisfy the who, when, why and how of the investigation.

5.7.4.A. Liability - Auto

1. Introduction (Use standard format)
2. Identification (Use standard format)

3. Foundation

   A. Claimant Vehicle: Year, make, model, VIN #, color

   B. Insured vehicle: Year, make, model, VIN#, color

   C. Location: Streets, city, county, state?

      - Type of street and intersection?
      - Marked lanes? How many? Width?
      - Direction of each street
      - Street surface: concrete, black-top, unpaved, gravel?
      - Did a street defect contribute to accident? Describe fully
      - Describe curbs and shoulders, grassy, gravel, degree of slope, width?
      - Traffic controls? What?
      - Conditions of visibility? Buildings, trees, shrubs, other obstructions
      - Weather? Snow, ice, rain?
      - Position of sun. Lighting

   D. Defect in Vehicle?

      - State part and age
      - Was defect obvious or concealed before accident?
      - Who last repaired this part? When?

E. Purpose of trip?

- Destination and origin
- Exact purpose
- Did owner consent to purpose?
- Witnesses to discussion with owner?
- Were any limitations discussed?

F. Use and Benefit

- Who benefited from trip?
- Was operator on mission for anyone?
- What route was necessary?
- Was route specified by owner?
- Was there any discussion on the route?
- At what portion of route did accident occur?
- Was there any deviation from pre-selected route?
- Any stops? Purpose of stops?
- Who paid expenses?
- Were any passengers engaged in a joint business purpose with owner or operator?

4. Description of Accident/Occurrence

A. Day, Date and Time

B. Accident Detail

- Where were you when you first saw the other vehicle? Direction, speed, lane?
- Where was other vehicle when you first saw it? Direction, speed, lane?
- Did you notice any other vehicles? Where were they?
- Were headlights in use?
- What signals did you make?
- What signals did other driver make?
- What did you do when you saw the other car?
- What did it do?
- Where was your car when you first knew you were going to collide?
- Where was the other car?
- At what point did the collision occur?
- What part of your vehicle contacted the other vehicle?
- What was your speed at the time of impact? The other car?
- What were the relative locations of the cars at impact?
- Where did your car come to rest? The other car?
- What was said immediately after the accident?

- Was anyone in either car drinking or using drugs?

C. Expert Investigation

- Who called Police?
- How long afterwards did they arrive?
- What department responded?
- Names
- What did they do or say?
- Were any citations issued?
- Were any photographs taken?

D. Witnesses

- Name; address, phone numbers
- Who invited them?
- Purpose in car? Social or Business?
- Any money or other benefit given driver in return for ride?
- Details - frequency, driver skill
- Any drinking? By whom? How much?
- Did you object to manner of driving? Protest? Ask to be let out?

5. Injuries/Damages

A. Describe All Injuries To Each Part Of Body Involved

B. Medical Treatment, Expenses, Lost Earnings

- Hospital-where, length, charges?
- Doctor-who, how often, charges?
- Other care and expenses
- Net wage loss? Verified? Tax records?
- Scarring, Amputation, Other Permanent Disability
- Disability Payments?
- Anticipated Future Care?
- If Property Damage
- Repair or replacement costs? Loss of use?

6. Summary (Use standard format)
7. Closing (Use standard format)

NOTE: See additional questions on auto cases in the section on investigation outlines.

5.7.4.B. Liability Statements - Construction

1. Introduction (Use standard format)
2. Identification (Use standard format)
3. Foundation

A. The Job

- Location
- Start - finish
- Describe job

B. The Parties
   - Owner
   - General Contractor
   - Sub-Contractors
   - Claimant

C. Relationship of Parties
   - Contracts
   - Indemnity agreements

D. Control
   - Who controls job
   - Safety meetings

E. The Work
   - Work to be done by each contractor

4. Description of Accident

A. Date, Time.

B. Accident Detail
   - Describe accident
   - Claimant occupation
   - Job duties
   - Claimant activities just prior to accident
   - Condition which caused accident
   - Under whose control

- Safety violations
- Job housekeeping

C. Expert Investigation

- Investigation by State Safety Inspector
  i. Before accident
  ii. After accident
  iii. Any citations
  iv. Copy of report
  v. Photos
- Investigation by Job Safety Engineer
  i. Conclusions
  ii. Copy of report

D. Witnesses

- Name, address, phone number
- Employer, occupation
- Witness location at time of accident

5. Injuries/Damages

- Describe all injuries
- Medical treatment
- Prior medical history
- Present complaints
- Permanent impairment

- Time off work
- Medical expense
- Future expense
- Other expense
- Lost wages

6. Summary
   - Use standard format
7. Closing
   - Use standard format

NOTE: See additional questions on construction case in the section on Investigation Outlines.

5.7.4.C. Liability Statements - Premises

1. Introduction (Use standard format)
2. Identification (Use standard format)
3. Foundation
   A. Ownership and Control
      - Present owner
      - Length of ownership
      - Who control premises
      - Lease agreements (written or verbal)
      - Maintenance agreements

B. Claimant's Status on Premises
   - Trespasser
   - Licensee
   - Invitee

C. Description of Premises
   - Photos
   - Diagram
   - Activities in area
   - Hazards in area
   - General condition and maintenance

4. Description of Accident
   A. Date and Time
   B. Location
   C. Description of Accident (Slip and Fall Situation)
      - Describe accident
      - Clothing
      - Shoes (soles-heels)
      - Glasses
      - Carrying Package
      - Walking
      - Running
      - Foreign object

- Inspection schedule
- Sweeping schedule
- Notice to insured
- Slippery floor
- Maintenance responsibility
- Maintenance schedule
- Type floor
- Wax used
- Stairway
- Height of riser
- Width of tread
- Banister
- Building code
- Lighting
- Notice of hazard
- Prior use of premises

D. Witnesses

- Name, address, phone number
- Employer, occupation, relationship to claimant or property owner, contractor, or sub-contractor
- Witness location at time of accident

5. Injuries/Damages
    A. Describe all injuries
        - Medical treatment
        - Prior medical conditions
        - Present complaints
        - Permanent disabilities/impairments
        - Time off work
        - Medical expense
        - Future expense
        - Other expense
        - Lost wages
6. Summary (Use standard format)
7. Closing (Use standard format)

NOTE: See additional questions on premises cases in the section on Investigation Outlines.

5.7.4.D. Liability Statements – General Product

1. Introduction (Use standard format)
2. Identification (Use standard format)
3. Foundation
    A. Describe and Identify Product (include sketches and photographs)
        - Make and manufacture
        - Serial, model, lot and batch number

- Dimensions, weight, color, shape
- New or used?
- Finished product or component part?
- If a component, who manufactured it?

B. Where Purchased or Acquired?
- Who was involved in chain of distribution?
- For what purpose was product purchased?

C. Was Product Functioning Properly?
- Warnings and instructions clear?
- Ever repaired, serviced, altered? By whom?
- Any defects or damaged parts?

D. Were Guards and Safety Devices Provided?
- If not, would they have prevented injury?
- Are they now provided?

E. Warranties Apply?
- Express or implied?
- By whom?

F. Are there questions concerning design?
- Materials
- Assembly
- Testing
- Foreseeable product misuse

- Labeling
- Packaging
- Do statutory requirements apply to labeling or packaging

G. What Industry or Government Standards Apply to the Product?

H. Are any manuals supplied with the product? (Obtain copies.)

4. Description of Accident/Occurrence

A. Date, time, place

B. Describe accident in detail:

- Where was injured party in relation to product?
- Why was person or object there?
- What was being done?
- How was product being used?
- Misused?
- Know how to use?
- Did product do what it was intended to do?
- Used before for same or similar purpose?

C. Defects or problems noted prior to accident

D. Claimant activity

- Immediately prior to accident
- What was purpose of activity? .

- Employed or on own time
- Training in use of product
- Oral Instructions
- Labels
- Brochures

E. Diagrams or photographs

F. Expert Investigation

- Anyone examine product or take photos of product after incident? (OSHA, police, others?)
- Where is product now?
- Is it available for identification, photos, scientific analysis?
- Are there experts who can assist?
- Qualifications?
- Can any other expert be recommended by the claimant?

G. Witnesses

- Co-workers or others present at time of accident?
- Names, addresses, phone numbers?
- Where were they?
- What did they do or say?

- Others who came upon the scene after the accident?
- What was said immediately after the accident?

5. Injuries/Damages
   A. Describe all injuries to each part of the body involved.
   B. Medical treatment, expenses, lost earnings.
      - Hospital - where, length, charges?
      - Doctor - who, how often, charges?
      - Other care and expenses.
      - Net wage loss? Verified? Tax records?
   C. Scarring, amputation, other permanent disabilities.
   D. Disability payments?
   E. Anticipated future care?
   F. If property damage:
      - Repair or replacement costs?
      - Loss of use?
6. Summary (Use standard format)
7. Closing (Use standard format)

NOTE: See additional questions on products cases in the “Investigation Outlines” subject in this manual section.

5.8. Investigative Reports

5.8.1. Introduction

Important actions or decision bearing on the settlement of a claim are taken, or made in places and surroundings far removed from the site where the claim originated - i.e., the place where the accident occurred. What is more, a claim may be finally settled weeks, months, even years after the accident or occurrence. To bridge these gaps in time and place and to enable its functions to be performed efficiently, the claims business has developed a system all its own. The heart of this system is the claim file. The information placed in this file consists in part of evidence (statements, photographs, estimates, etc.) and in part, of reports.

Information gained today governs decisions made tomorrow. Work done here depends on what was learned elsewhere by someone else. Trial counsel, long after the fact, must think, decide and act. They must have a record enabling them, in effect, to recreate the accident.

The claim file--the information, evidence and reports in it--is the device necessary for transfer of information from place to place and to preserve information.

Moreover, the Claims Section is not an entity by itself. We are part of a larger organization which has a constant need for information regarding claims activities.

As adjusters, you are responsible for many files. Therefore, there must be a means by which to refresh your memory of the facts, initiate the process of evaluation and support your recommendations or decisions. From time to time, adjusters may resign or be promoted and thus, there must

be a record to enable your successor to pick up where you left off.

Each of the situations mentioned above reflects a need, and reports are the way we discharge our duties in respect to these needs. It is not too much to say, then, that without reports, we could hardly function. Reports should be complete, clear and concise.

Just as there is almost no limit to the extent to which a fender-bender can be investigated, there is no practical limit to what can be said about the simplest of occurrences. Therefore, strive for balance. Time does not permit you to over-report. If you do, witnesses will not be seen nor cases settled.

The adjusters stake in reporting has to do not only with the content, but with the timeliness of reports. Because overcoming the human tendency to procrastinate is often the biggest problem some adjusters face. Many adjusters find it easy to document while an item is hot, and almost impossible if even a few days are permitted to intervene between completing an item and reporting on it. If you find yourself procrastinating in reporting, try documenting more frequently.

Reports should be planned in terms of the uses to which they will be put. What questions are raised by the claim? What information should be recorded as an aid to memory? What information should the file reflect to justify action taken and to guide another adjuster, who may take over and handle the claim?

You should analyze the situation, put yourself in the supervisor/lawyer shoes, anticipate the questions and see to it that the report spells out the answers, producing a self-sustaining report which disposes of all the questions. A

report sufficient in content and sound in judgment enables the reviewer to respond. "I approve your recommendations." Reports that permit this response are ideal.

The use of captions has been standard procedure in reporting practice from the first days of the claims business. They endure for more than one reason. They are helpful checklists. Knowing that you will be required to report on a caption reminds you to perform the necessary operations while you are in the" field. Thus, a caption list may serve as an investigation guide.

Captions conserve adjusters' time. They provide information and permit summary reporting. Consider the following:

- Caption headings work for you by establishing the content of each paragraph. Stay within the caption. Having started out on one subject, do not stray to another.

5.8.2. File Summary Report

The investigation report serves to document the extent of the investigation performed, provide the adjusters analysis and conclusions, and informs the reader what the adjuster intends with regard to further investigation or disposition of the case. *Reference exhibit: File Summary Report in Section 5- Investigations.*

The File Summary Report is a part of the legal representation guidelines and is the format to be used in summarizing of all cases in which a claim is filed and litigation is anticipated.

The File Summary Report is also required on all liability and property damage claims having a reserve greater than $100,000.00.

The File Summary Report should be completed within 120 days from the notice of claim. If litigation is anticipated the report should be sent to the assigned attorney in the Litigation Management Unit prior to service of the lawsuit. Supplemental reports should follow every 180 days, thereafter.

For instance, if medical bills have not yet been received, under Caption "DAMAGES", it should be noted that this information will be provided when it becomes available. The File Summary Report Format does detail the items that should be addressed under each caption. The detail in any of these areas that is required will of course be dictated by the type of claim.

All original exhibits or attachments should be forwarded to the assigned attorney and copies retained for our claim file. Summaries of interviews or statements should also be attached and/or referenced in the body of the report under the appropriate caption.

5.9. Discrimination/Wrongful Termination Claims

5.9.1. Introduction

All charges of discrimination filed with either the Equal Employment Opportunity Commission (EEOC) or the Arizona - Civil Rights Division (ACRD) are to be coded as "EEOC Charges". The response and findings will be obtained for the file. If it is determined that Risk

Management involvement is needed, the adjuster will handle accordingly.

Each charge of discrimination filed with the EEOC is also assigned to an attorney in the Employment Law Section to provide legal assistance to the agency in filing their response, if needed. All charges of discrimination filed with ACRD create a conflict of interest within the Attorney Generals Office, and thus are assigned to outside counsel to assist in filing the response, if needed. The Attorney General's Office will encourage that charges be handled by EEOC whenever possible.

However, the Attorney Generals Office cannot always obtain the transfer of a State charge to EEOC (Federal) for handling. If the complainant is vehement, the charge can remain with ACRD. All Charges of Disability Discrimination may stay with ACRD, since there is federal regulation relating to Disability Discrimination.

5.9.2. Investigative Outline

Since discrimination and wrongful termination claims are unique unto themselves this separate investigative guideline has been created to assist in the development of the information necessary to evaluate the claim.

1. The adjuster should first consider the witness interviews to be conducted in the work place. The witnesses are anyone able to supply the adjuster with information. These witness interviews typically include:

   - Human Resources Department Personnel.
   - Anyone who has been in an advisory position in early grievance procedures or conversations.

- Witnesses to the actual events alleged.

2. The interviews should follow a general format; however, the Investigator should adapt the format to their specific needs. The general format is as follows:

   - A general background of the interviewee including a work history with the Agency, Department, Division and final work section.

   - The work environment and job duties of the interviewee at the present and during the relevant time frames.

   - The personal knowledge of the interviewee regarding the performance of the claimant. This portion of the interview should relate to the job duties of the claimant.

   - The impact of the claimant's conduct in the work place on the claimant's peers, subordinates and superiors.

   - The interviewee's knowledge of any hearsay or documents regarding the performance of the claimant, and the impact of the claimant's performance upon peers, subordinates and superiors.

   - The extent to which the interviewee has personal knowledge that the claimant was made aware of inadequate performance or behavior and of the response both verbally and by conduct of the employee (claimant) to such advice or warnings.

   - The knowledge of the interviewee as to other employees or former employees who were similarly

situated and were treated either the same or differently.

- Whether the interviewee believes they have been subjected to unlawful or unfair treatment and, if so, by whom and when' (who was present or has knowledge).
- Any written documentation the interviewee may have in the form of notes, messages, etc.

3. The adjuster should include in the interviews and investigation, specifics regarding the various categories of discrimination as they apply:

   A. National Origin: Items to be considered in a National Origin case are:

      - Country of the origin or ancestor's country of origin
      - Cultural or linguistic characteristics
      - Marriage to or association with persons of a particular national origin group
      - Membership in or association with groups that promote the interest of national origin groups
      - Attendance or participation in schools, churches, etc
      - Names or spouse's names that indicate national origin
      - Height and weight requirements that eliminate job applicants from any ethnic group
      - Foreign training

- Citizenship requirements
- English speaking rules
- Other (Explain)

B. Religion:

- Were reasonable efforts made to allow compliance with religious attendance, beliefs or exercises? Please explain in detail

C. Age:

- The ages of co-employees
- Layoffs compared to age
- Is an early retirement program available

D. Those with Disabilities:

- Does the individual qualify under the ADA?
- Were reasonable accommodations attempted? Please explain in detail
- It may be that the law is evolving to describe a Disabled person as any reason the applicant cannot get the job

E. Sex:

- Was the person (over a period of time) sexually harassed physically, mentally, by the individual staring or touching; was extortion part of the discrimination; or the act considered egregious behavoir
- Hostile Work Environment

- Quid Pro Quo

F. Reverse Discrimination

G. Pregnancy

H. Pay Discrimination

I. Retaliation or Reprisals: (whistle blowing)

J. Race/Color Discrimination:

- Arrest and conviction records
- Garnishment and credit ratings
- Language usage and writing ability
- Education requirements
- Race related appearance
- Segregated job classifications, seniority systems, lines of progression
- Other (Explain)

4. Certain information relating to the claimant is vital to the investigation. The following information should be obtained:

- Date of hiring
- Title at the time of hiring
- Work place location at the time of hiring
- Date current position began
- Title of current position and location of current position

- What was the title at the time of alleged discrimination?
- What was the employee's status (permanent, uncovered, temporary, at will)?
- What was the annual, monthly and hourly pay rate at the time of the alleged discrimination? RM uses an approximate 30 percent figure on employee related expenditures/benefits (ERE)
- Was the claimant an applicant for employment? Was the claimant in a promotional situation?
- What is the employee's seniority?
- Is the employee in any protected classes: Minority, Disabled, ADA, etc.

5. Information concerning the work place must also be gathered:

   A. How many employees work in the department?

   B. How many employees work in the claimant's immediate working area?

   C. If the following information applies, explain it in detail during your investigation:

      - Name of co-employees, their titles and departments
      - Type of work completed
      - What is the age breakdown of the employees in the work group?
      - The color/race of each employee in the work group

- What is the gender breakdown of the employees in the work group?
- What is the national origin of each employee in the work group?
- What is the religious background of each employee in the work group?
- Any other statistical information comparing the claimant to the general working group
- Attach copy of department organization chart

6. The final category of information deals with the triggering event and the agencies handling of the situation:
   - Supply evidence of the triggering event
   - Supply documentation of progressive discipline
   - What do the employee's Performance Evaluations reflect?
   - Had the decision-maker looked at the employee's entire personnel record?
   - Determine if the compelling explanations or sympathies are in favor of the employee or the claimant
   - Determine how similar situations have been handled in the past
   - Has the department's own statutes, policies, or employee handbook procedures been complied with?

- Has the ADOA Human Resources Department's statutes, or policies been complied with?
- Had the employee's explanation of the triggering event been obtained before making the termination decision?
- Should there have been a "final warning?"
- Should there have been a 60-day, or some other reasonable time limit probationary warning period?
- Would a transfer of the employee to a different job or facility, or a medical or personal leave of absence have alleviated the problem?
- Has the employee been dealt with in good faith and fair dealing?
- How does the resume or original application of the employee compare to other applicants?
- Were qualifications on the original application verified?
- Is the original application accurate as to:
    i. Date of Birth
    ii. Social Security Number
    iii. References
    iv. Education
    v. Work History

5.10. Index System

5.10.1. Introduction

The Index System Bureau is utilized by insurance companies and self-insurers as a centralized source of information to identify possible fraudulent claim activity, pre-existing injuries that might reduce a Claim settlement, and claims outstanding with other companies.

Only certain types of claims are to be reported to the Index System Bureau. The initial submission of claimant information is accomplished by the completion of the Index System Bureau Form. A Supplemental index card is also prepared and reported to the Bureau if a suspicion exists that a claimant has presented a subsequent claim, or if further material information becomes available and an updated report to the Bureau is considered necessary.

5.10.2. Claims to be Reported

Claims to be reported to the Index System Bureau are:

- All Automobile Liability Bodily Injury (ABI) claims.
- All General Liability Bodily Injury (GLBI) claims, including Aircraft, Assault and Battery, False Arrest, and Malpractice claims.
- Workers Compensation Claims which meet the criteria set by the Bureau.

  NOTE: Property Damage claims are not serviced by the Bureau.

5.10.3. State of Arizona's Reporting Office Code Designation

The Reporting Office Code number assigned by the Index System Bureau to the State of Arizona is: S51600001

1. Reporting Procedures

   A. Determining Reporting Requirements:

      – The adjuster is responsible for determining if the claim qualifies as type to be reported according to the following:

         i. Injury value of the claim, without regard for liability, exceeds $2500.00 (False Arrest, Wrongful Imprisonment, Wrongful Detainment), .

         ii. All other "bodily injury" and "personal injury" claimants regardless of value.

      Note: Reports are to be submitted for all claimants where there is suspicion of fraud, malingering, or any case where it is felt there will be a potential benefit.

   B. The BI Index Report form should be completed within 30 days and submitted to the clerical unit for input.

   C. Inquiry Form:

      – Inquiry Form is to be used only in cases where a substantial claim is involved and it is vital that we develop prior claim detail.

      – Inquiry Form received from Bureau subscribers should be completed promptly (within 30 days

or less) and returned to the inquiring subscriber.

NOTE: Under no circumstances are requests for medical reports, or other claim documents, to be honored.

D. Inquiry Form: Index System Bureau - Closed File:

- If our RMS claim file is closed, and in Office Retention, pull file, complete Inquiry Form.
- If our RMS claim file is closed, and in Archives, request return of file from Archives; upon receipt of file from Archives, complete Inquiry Form.
- If our RMS claim file is closed, and destroyed, advise inquiring subscriber.

5.11. Loss Prevention – Claim Referrals

5.11.1. Loss Prevention Referrals

The Loss Prevention Unit's responsibilities include monitoring loss prevention measures that mitigate and eliminate the potential for claims to occur. Therefore, when an adjuster identifies an exposure that has potential for loss prevention measures to be initiated, exposures with high frequency, or exposures with high severity rates, Loss Prevention should be notified. The Claims Referral Form Process has been developed to ensure proper notification and file documentation. Supervisory review is required prior to submission to Loss Prevention Unit. *Reference exhibit: Claims Referral Forms (CRF) Process in Section 5 – Investigation.*

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5.12. EXHIBITS: INVESTIGATION

A. Independent Adjuster Assignment Sheet

B. Claims Evaluation/Investigative Report

C. MVR Procedures

D. MVR Request Form

E. Internet Resource Guide

F. Digital Photograph Chain of Evidence Procedures (Reserved)

G. 8 Point Photo Method

H. Photo Mounting Sheet

I. ADOT Photo Log

J. File Summary Report

K. BI Index Report Form

ALPHA LIST

ADOT Photo Log (I)

DEPARTMENT OF ADMINISTRATION
LIABILITY MANUAL

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Section: Investigation

6. Reserves

6.1. Reserving Principles for Liability Claims

6.1.1. Introduction

The Risk Management Section operates on a revolving fund which is replenished on a yearly basis by the legislature. Each State Agency, Board and Commission is assigned an allocation by Risk Management based primarily on the claims history and in part on the reserves placed on open files. The more accurately the individual claim files are reserved, the more accurately Risk Management is able to determine the funding needs for future years and fairly allocate the funding requests to the Agencies, Boards and Commissions.

6.1.2. Objective

Risk Management's objective is to promptly establish reserves that best reflect the anticipated value of each reported claim. When establishing a reserve the reserve should reflect neither the best or the worst possible result, but a realistic outcome based on the facts available at the time that the reserve is set. Facts in dispute or unresolved issues should be considered in the claimants favor when estimating damages and establishing reserves.

6.1.3. Timing of Initial Reserves and Reserve Changes

- An initial factor reserve is to be set-up on all new claims at the time a new file is opened. *Reference exhibit: Factor Reserve Worksheet in Section 6-Reserves.* The supervisor must be notified when the

indemnity, legal, and expense reserves exceeds $100,000. The claim manager must be notified when the indemnity, legal, and expense reserves exceed $250,000.

- All reserves are to be updated immediately when a significant development occurs which impacts the estimated value of the claim.

6.1.4. Establishment of Bodily Injury Reserves

The first step in establishing a bodily injury liability reserve is to quantify the "Special Damages" which include the following items:

- Past and future hospital expenses
- Past and future Doctor expenses
- Past and future wage loss
- Past and future miscellaneous expenses incurred

Once the "specials" have been identified an estimate of the general damages must be calculated. General damages include but are not limited to pain and suffering, loss of consortium, permanent scarring, reduced mental capacity, etc. Generally speaking, on minor injury claims in which there is no permanent loss, a multiplier of the medical specials may be an acceptable method to establish a verdict range which is then, of course, reduced by the percent of liability attributable to the claimant and or joint tortfeasors. There are any number of factors that must be considered in most cases when establishing reserves, including but not limited to the following:

- Sympathy

- Applicable law (immunities, etc.)
- Extent of Scarring
- Permanent physical, mental or psychological impairment
- Effectiveness of witnesses (both defense and plaintiff)
- Venue of trial
- Effectiveness and experience of defense counsel and plaintiff counsel

6.1.4.A. Establishment of Catastrophic Injury Reserves

1. To follow are examples of catastrophic type injuries:
   - Fatality
   - Brain or brain stem injury
   - Major extremity amputation
   - Paralysis of any part of the body
   - Severe burns or serious disfigurement
   - Blindness
   - Heart attack
2. The thought process in developing a reserveforcatastrophic type injuries is similar to reserving a bodilyinjury case. In order to evauate a proper reserve, it isnecessary to quantify the following, including but notlimited to:
   - Past and future hospital/extended care expenses

- Past and future medical expenses
- Past wage loss and future income loss
- Past incurred and future additional expenses (residential renovations, special equipment, etc. needed for disabilities)
- Extent of Scarring
- Permanent physical, mental or psychological impairment
- Life Care Plans (i.e. assisted living expense, etc.)
- Funeral Expenses
- Loss of Consortium
- Sympathy
- Applicable law (immunities, etc.)
- Venue of trial
- Effectiveness of witnesses (both defense and plaintiff)
- Effectiveness and experience of defense counsel and plaintiff counsel

6.1.4.B. Establishment of Discrimination/Wrongful Discharge Reserves

Generally speaking comparative negligence is not an issue in employment cases as it is basically an all or nothing proposition. The thought process in developing a reserve on an employment case is much the same as that used in reserving a bodily injury case.

- Lost and/or future wages
- ERE/benefits
- Attorney Fees
- Medical expenses (emotional distress)

All cases of discrimination filed within the Equal Employment Opportunity Commission (EEOC) or the Arizona Civil Rights Division (ACRD) will be set up with a $500 indemnity reserve and will not be increased unless the claimant files suit or a significant exposure is identified.

6.1.4.C. Reserve Analysis Documentation

The reserve analysis should be clearly documented in the file. The file documentation should support reserve modifications.

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6.2. EXHIBITS: RESERVES

A. Factor Reserve Work Sheet

DEPARTMENT OF ADMINISTRATION
LIABILITY MANUAL

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7. Litigation Management

7.1. Litigation Management

7.1.1. Introduction

Ever increasing legal costs make it imperative that a disciplined, cost effective approach be used in the management of litigation. If this approach is followed we can be assured all bases have been covered and appropriate, informed decisions have been made with respect to the defense. It is also imperative each adjuster be thoroughly familiar with the provision of the following documents:

- Intergovernmental Agreement between Risk Management and the Attorney General's Office *Reference exhibit: Interagency Services Agreement between the DOA Risk Mangement and AG's Litigation Mangement Section in Section 7- Litigation Management.*
- The legal representation guidelines prepared by the Litigation Management Section and Risk Management *Reference exhibit: Revised Outside Counsel Guidelines in Section 7- Litigation Management.*
- Contract for outside counsel. *Reference exhibit: Agreement for Outside Counsel in Section 7- Litigation Management.*
- Attorney General's Office Agency Handbook. *Reference exhibit: AG Handbook in Section 7- Litigation.*

The objective of litigation management is to facilitate the earliest possible disposition of cases at the lowest total cost consistent with the State's legal and ethical obligation.

7.1.2. Adjuster's Responsibility in Litigation Management

- Identify and complete all investigation and gather material necessary for preparation of a File Summary Report and provide original file material to defense counsel. *Reference Exhibit: File Summary Report in Section 5- Investigations*.
- Participate in development and implementation of a litigation management plan.
- Consideration of change of venue issues.
- Evaluate merits of dispositive pleadings.
- Evaluate each case for early settlement.
- Secure additional information required by defense counsel.
- Attend pre-trial and settlement conferences.
- Review status reports and take the initiative necessary to bring litigation to an early conclusion, when appropriate.

A sample of a Litigation Case Evaulation Report Form is included in the exhibits. *Reference ehxibit: Litigation Case Evaulation Report Form in Section 7*.

7.1.3. Disposition Before Legal Cost Incurred

In evaluating claims for settlement purposes, it is important to consider the defense costs. Serious consideration should be given to any lawsuit containing potential plaintiff attorney fee remedies, plus plaintiff damages when evaluating total exposure. This however is not intended to imply that any consideration will be given to settlement of a totally meritless claim simply to avoid defense costs.

7.1.4. Extensions

After service of a summons and complaint, the defendant has a limited period of time in which to respond by filing either an answer to the complaint or some other responsive pleading. It may be desirable to arrange for an extension to avoid incurring defense costs while continuing settlement negotiations.

- Extensions of time must be obtained from the attorney who filed the suit against the State. Such extensions come in two forms:

    i. An extension for a specified period of time, such as 45 or 60 days.

    ii. An extension for an indefinite (or open ended) period of time, with - an accompanying agreement that the plaintiff attorney has the right to require a response by a certain date after giving advance notice (usually 10 or 20 days) of their intention to exercise this right.

- It is important that extensions of time always be confirmed in writing.

- To keep in accordance with the Rule of Civil Procedures , extensions should only be granted when they will mitigate defense costs.

7.1.5. Choice of Defense Counsel

1. In-House Counsel

   It is our policy to make maximum use of in-house legal resources, i.e., Attorney General's Litigation Management Section, Transportation and Employment Law Unit as well as Agency Counsel when possible. The only cases to be assigned to outside counsel are as follows:

   - Conflict of interest within the Attorney Generals Office.
   - Insufficient staff time available to adequately defend the case.
   - Cases which require the experience or special skills of a particular outside attorney due either to the complexity or value of the claim.

2. Adjusters Responsibilities

   - Review with supervisor, attorney assignment on all new lawsuits.
   - In any case assigned to in-house counsel, which the adjuster believes should be defended by outside counsel, the adjuster is to advise their supervisor. The Claims Supervisor will advise the Claims Manager who will be take the matter up with the Chief Counsel of the Litigation Management Section if deemed necessary.

7.1.6. Litigation Management Plan

Upon completion of investigation on a case in which litigation is anticipated, the assigned adjuster shall forward all original file material to the Attorney General's Office Litigation Management Section with a copy of the File Summary Report. *Reference exhibit: File Summary Report in Section 5- Investigations.*

If outside counsel is assigned, original file material should be forwarded to counsel by the Litigation Management Section, unless other arrangements are agreed to.

1. Outside Counsel

   Once authorization is received, an appointment letter will be generated by the chief counsel of the Litigation Management Section. The letter is to include outside counsel's appointment as a special Assistant Attorney General. Outside counsel cannot not assign the file to someone else within the firm without prior approval from the AG's Office. Counsel should set up an initial litigation-management meeting within 30 days of the assignment.

   The objective of the meeting is to:

   - explore early disposal through motions
   - evaluate liability and damages
   - establish a defense plan and establish legal and expense reserves
   - review and approve defense costs, expert fee agreements, etc.

- advise counsel that any deviation from the defense plan must be approved by the adjuster and submitted in writing, as requested.
- advise counsel that quarterly reports are required.

Quarterly reports will address all items in the previous agreed litigation plan and will be reviewed by the Risk Management adjuster prior to attending the next quarterly litigation management meeting. Subsequent meetings will cover what was accomplished during the prior quarter and development of a plan with cost estimates. It is imperative that the adjuster review quarterly reports prior to the meeting so no time will be wasted.

The litigation management meeting should normally last no longer than one hour. Only one lawyer per defendant from the outside counsel firm is to attend (billable hours) the meeting. Whenever possible, the meetings will be held in outside counsel's office. The monitoring LMS attorney has to be prepared to discuss the case and be an integral part of the case management meeting.

All inquiries from defense counsel should be directed to the Risk Management adjuster. The Risk Management adjuster shall keep the supervising attorney in the LMS involved in the decision making process as needed.

Reports on significant developments in the case are required to be sent to the Risk Management adjuster and to LMS. The Risk Management adjuster needs to ensure we are receiving brief summaries of important depositions, decisions on pending motions, and significant developments that have come up through other discovery.

2. In-House Counsel

An initial litigation management meeting is to be conducted with in-house defense counsel in the same manner as discussed above with outside counsel. A Litigation Management plan should be developed at that time.

LMS counsel is to provide quarterly reports on all cases. Litigation Management Meetings are to be conducted and Litigation Plans updated. It is up to the adjuster to determine the need for a formal meeting on low value litigation or cases that have not had any significant change. The adjuster should review the IGA between LMS and State Risk Management. It is imperative that cases be evaluated as soon as possible so they can be disposed of expeditiously.

7.1.7. Defense Attorney Billings

Bills from outside counsel are to be sent to LMS for initial approval, unless the bill relates to a conflict of interest case. Once LMS has signed off on the billing, they are to be reviewed by the adjuster who will authorize the billing for payment. Billings on conflict files will be approved by Risk Management only. All billings must comply with the requirements of the contract with outside counsel and must contain the following information:

- Individual services should be itemized and dated.
- The dollar cost or number of hours per service should be indicated.
- The individual performing the services on behalf of the firm should be listed.

- The hourly rate for each individual performing services should be indicated.
- It is the adjuster's responsibility to ensure that all services billed have been completed. THE ADJUSTER IS ALSO RESPONSIBLE FOR ENSURING THAT THE BILLINGS DO NOT CONTAIN SERVICES NOT PREVIOUSLY AUTHORIZED BY RISK MANAGEMENT.

7.1.8. Settlement Authorization and Negotiations

Settlement authority is outlined in the IGA and legal representation guidelines as well as in the "Payments and Settlements" section of this manual. The adjuster is responsible for complying with all provisions of these agreements.

The timing and preparation of the Rule 14 document is also described in detail in the "Payments and Settlements" section of the manual. It is absolutely imperative that any negotiations conducted in excess of $250,000 be prefaced by an explanation to the plaintiff that any settlement in excess of $250,000 is "subject to Joint Legislative Budget Committee (JLBC)) approval."

Prior to any settlement negotiations on a litigated case, defense counsel and the Risk Management Adjuster should agree on who is to handle such negotiations, and what approach and negotiation techniques will be most appropriate in the particular case.

7.1.9. Pre-Trial Reports

To assist in our litigation management efforts, the adjuster must request that the assigned counsel provide a 60-day pre-trial report

The Pre-Trial Report format is identical with that of the Rule 14 Format. By using the same format and instead of Rule 14, use the heading of PRE-TRIAL REPORT.

The report will be used as part of the Pre-trial Litigation Management Meeting. The Pre-trial Litigation Management Meeting will consist of:

- Risk Management Claims Manager (optional)
- Risk Management Supervisor (optional)
- Risk Management Adjuster
- Attorney General Counsel assigned to the Case
- Attorney General Unit Chief (optional)
- Outside Counsel (if one is assigned)
- Representative of the Agency Involved in the Suit

The Litigation Management Meeting will take place 60 days prior to trial. The Attorney General Counsel assigned to the case will schedule the meeting location, date and time.

7.1.10. State of Arizona-Risk Management Policy on Alternative Dispute Resolution (ADR)

The Alternative Dispute Resolution (ADR) Program is part of Risk Management's everyday claims handling process.

Each adjuster will be responsible for determining if ADR is appropriate. Inquiry should be made continuously throughout the life of the case. Adjusters will be required to review each IF:

After the completion of the investigation and if your negotiations have stalled, the adjuster should consider ADR.

Prior to the time of a Rule 16 settlement conference, ADR should be considered.

The use of a neutral mediator, mini-trial, summary jury trial, or Rule 16 settlement conference are all continuing attempts to negotiate the cases through the use of negotiation and ADR suggestions.

If the adjuster does not feel defense counsel is responding to ADR, please advise your supervisor, and together deal with the problem.

Outside counsel will be required to make an early evaluation based upon the investigation provided by the adjuster. LMS also will provide input to the assigned outside counsel to help evaluate the case.

In a case in Litigation, it will be the responsibility of the defense attorney to communicate and set up procedures with the plaintiff attorney to institute ADR. The adjuster should participate in the selection of the mediator, review a copy of the position statements, and actively participate in the negotiation process. *Reference exhibit: Settlement*

Conference Participation Memo in Section 8- Payments and Settlements.

Upon completion of the mediation the adjuster should update the information accordingly in Envision (i.e. log notes, mediation dates, etc).

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7.2. EXHIBITS: LITIGATION MANAGEMENT

A. IGA between the Attorney General's Office and Risk Management

B. Legal Revised Outside Counsel Guidelines (04-11-95)

C. AG Agreement for Outside Counsel

D. AG Handbook

E. Litigation/Case Evaluation Form

ALPHA LIST

DEPARTMENT OF ADMINISTRATION
LIABILITY MANUAL

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Section: Litigation Management

8. Payment and Settlements

8.1. Settlement Philosophy

8.1.1. Introduction

The Risk Management Division for the State of Arizona seeks to effectively manage each claim to a timely, equitable disposition at the lowest total cost consistent with established procedures and statutes of the State of Arizona.

In order to achieve this goal, the following specific concepts have been adopted:

- Prompt, courteous claimant contact which creates a favorable impression with the claimant which carries over through the final disposition.
- Effectively communicating with the claimant regarding what the claimant must do, and what Risk Management will do to bring the claim to conclusion. This is essential to an early resolution of the claim.
- A well-conceived plan of action should be developed for disposing of each claim as expeditiously and as equitable as the coverage, facts, controlling legal principles and prudent judgement dictate.
- A well-conceived plan of action includes appropriate settlement alternatives, such as Open-End Releases (Supervisor approval is required.), No Releases, and Structured Settlements (See the Annuity Vendor List maintained by clerical) .
- The State Attorney General's Office has determined that the Unfair Claims Practices Act does not apply to

State Risk Management. *Reference exhibit: Unfair Claims Practices Act e-mail/memo dated 4-9-04 in Section 8- Payment and Settlements.*

8.1.2. Nature and Purpose of Settlement

Settlement is the process by which parties having disputed matters between them reach an agreement as to what is due from one to the other. It contemplates a willingness on the part of each to forego their legal remedy and perform their part of the bargain if a satisfactory arrangement can be reached. In liability claims, a settlement usually involves the payment of money to the claimant in lieu of their right to pursue a cause of action.

8.1.3. Burden of Proof

In determining the cases which qualify for settlement, consideration will be given to the facts and whether or not the claimant can meet the burden of proof which the law imposes upon them. To recover, the claimant must cross the "bridge of proof' from accident to verdict.

The claimant must prove the defendant was negligent, the defendant's negligence was the proximate cause of the accident, and that the damages were sustained as a result of the accident.

8.1.4. Qualifications for Settlement

The settlement process is undertaken only where both parties to the controversy are willing to resolve their disputes by that means.

It is the adjusters duty to determine at the earliest possible moment cases which qualify for settlement discussion and

those which do not. At the same time, the adjuster will make a determination in the qualified cases just how far Risk Management will be willing to go in meeting the claimant's demands. All claims will fall into one of three classifications: clear liability, comparative liability, or no liability.

- Clear liability - Where the sole responsibility of the defendant can be established and there is no defense available and if a reasonable, settlement can be agreed upon, these cases should be settled promptly.
- Comparative liability - There will be cases where the claimant can make a prima facie case, and therefore be entitled to submit the case to the jury. These cases usually should be compromised. The extent of the compromise depends upon the strengths and weaknesses of the claimant's case as opposed to the strengths and weaknesses of the defense.
- No liability - In cases where the adjuster is convinced that the claimant cannot make a prima facie case, or where the investigation reveals that the accident was caused solely by the negligence of a third party, there is no liability and these cases should be denied.

8.1.5. Relationship of Injury to Settlement

The nature and extent of the injury will have some influence upon the question of settlement. If the injuries are serious and of a permanent nature, or if there is a death claim involved where there are minor children, a sympathetic element may be introduced into the trial of the case. In those cases, settlement consideration should also contemplate the possible jury reaction**.**

8.1.6. Psychology of Settlement

When a claimant is involved in an accident resulting in an injury, they have been exposed to a new, and in some cases, a frightening experience. The more serious the injuries are, the greater the mental as well as physical impact. The claimant will have had time to reconstruct the accident, to relive the events, and more importantly, develop a mental certainty as to the part that the negligent act, omission, or commission by the State played in the causation of the event. The adjuster assigned to the claim represents the wrongdoer, or the cause of the claimant's troubles. The adjuster is part of the opposition and, as such, is regarded as the claimant's opponent. These are the obstacles which the adjuster must overcome before they can get down to the business of disposing of the claim by settlement.

The psychology of salesmanship is applicable to the settlement process. The adjuster is in a sense a salesman, attempting to offer ideas rather than merchandise and to secure the claimant's acceptance of them. The psychological factors which influence salesmanship apply equally to the matter of settling claims. These factors are:

- Establishment of friendly relations
- Appreciation of the claimant's position and feelings
- Agreement on non-controversial issues
- Attention to the claimant's views
- Sales argument
- Solution by settlement or with structured settlement.

8.1.7. Settlement Discussions

Settlements can be consummated by mail, telephone, or in person. Small cases usually qualify for disposition by one of the first two methods. A request can be made by mail or telephone for the bills incurred, either for medical treatment or property damage as the case may be. The case can be discussed by telephone, and a settlement agreed upon; or an offer of a settlement at a specific amount can be made by mail.

Settlement discussions should take place as soon after the accident as possible, at a time when the claimant is willing and able to discuss settlement. The adjuster should not attempt to force the claimant into a settlement discussion when it is clear that the claimant wants to wait until some future date.

8.1.8. Control of the Claim

When the claimant retains an attorney, the adjuster looses control of the case to some extent. In order to avoid this from occurring in as many cases as possible, the adjuster must make immediate contact with the claimant, even though this first contact cannot possibly produce a settlement. The adjuster must arrange for frequent call-backs to check the claimant's progress. Generally, cases in the hands of attorneys take longer to resolve and are often times more costly than if settlement is made with the claimant directly. Generally speaking, the adjuster has more control and will be able to arrive sooner at an equitable solution to the claim if the claimant is not represented by counsel.

8.2. Settlement Negotiations

8.2.1. Introduction

The settlement value is an amount that would be to the advantage of the claimant to accept and to Risk Management's advantage to pay. Settlement negotiations are the means by which both parties seek to arrive at a figure which is acceptable. There is a certain amount of "horse trading" in this process, with the claimant seeking to get as much as they can for their damages and the adjuster seeking to make a settlement at a reasonable figure, on behalf of Risk Management.

Before entering into settlement negotiations the adjuster will consider the relative bargaining positions of the parties, the advantages which the facts of the case give to the State, and the disadvantages which will accrue if the case is not settled. The adjuster will consider the possibilities of the claimant's recovery, the possible amount of recovery, and the probability of a defense verdict.

8.2.2. The Offer

The offer, is one of the elements in the formation of a contract and may be made by either party. It must be definite in its terms and is, in effect, a proposal to make a contract. The person to whom the offer is made may, by acceptance, create a binding contract. The offeror cannot make a binding contract and there is nothing that they can do after having made the offer to bring the contract into existence. Therefore, the person making the offer is at this stage in a less-favorable position than the offeree. The offeree can bring a contract into existence by acceptance; the offeror cannot. A counteroffer is construed as a rejection of the original offer and terminates it. The

counteroffer then becomes the only offer and the person to whom it is made can create a contract by acceptance.

8.2.3. Negotiations with Attorneys

The adjuster should bear in mind that in dealing with an attorney they are dealing with a limited agent, one who normally has no authority to settle the claim without specific authorization from the client. Therefore any negotiations are subject to the approval of the client, and no offer of settlement can be accepted without having been submitted to the client. Since the attorney is charged with some knowledge of the value of the claim, there is no reason why the attorney should not be asked to make their demands known. Generally speaking, the adjuster should not make the first or initial offer. Once the attorney has made a demand, usually considerably more than they expect to get, the adjuster may make a counteroffer within the limits of their authority.

The general rule is that an offer should not be increased unless there is a corresponding decrease in the demand. The reason is that an increase under those circumstances would serve no useful purpose and will impede the settlement negotiations rather than advance them.

On all cases in suit or in which the settlement amount exceeds $100,000, the adjuster must follow the guidelines established in the Intergovernmental Agreement with the Attorney Generals Office and the legal representation guidelines. IT SHOULD ALSO BE EMPHASIZED THAT ALL OFFERS MADE IN EXCESS OF $250,000 ARE MADE SUBJECT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE APPROVAL. No offer in excess of $100,000 shall be made without prior approval of Department of

Administration and the Attorney General. *Reference exhibit:AG Handbook in Section 7- Litigation.*

8.2.4. Health Care Provider Liens

When settling a bodily injury claim in which there is no verification that medical bills have been paid, the adjuster must confirm that no medical liens are outstanding. The Staff Investigator can provide this service. *Reference exhibits: A.R.S. § 33-931 through 33-936 in Section 1-General.*

8.3. Releases

8.3.1. Introduction

A release is a contract whereby the person executing the instrument (the releasor) gives up a right, claim, or privilege to the person against whom it might have been demanded or enforced (the releasee). To be a binding contract, it must be supported by a valuable consideration. The consideration passing from the releasee to the releasor in our cases is the payment of a sum of money, and the consideration passing from the releasor to the releasee is the extinguishment of the releasor's right to bring legal action to enforce their claim.

The contract of release is executed, or completed, when both parties have performed this respective obligations thereunder; namely, where the claimant has relinquished their right and was evidence thereof has signed the release, and the State has performed its obligation by making the payment of the money recited as the consideration.

Properly executed releases are to be obtained in all liability claims involving bodily injury or personal injury. Releases on property damage liability settlements are not normally required unless there is some reason to believe that additional damages will be claimed in the future.

If a claimant is represented by counsel, a warrant and release my be sent to the attorney with the understanding that the warrant is not to be negotiated until the release has been properly executed and returned. If dealing directly with a claimant, an in-person meeting can be scheduled to exchange the warrant for the executed release. If this is not practical, the adjuster should send the release by mail and upon its execution and return,,the warrant can be sent.

8.3.2. Effect of a Release

Generally, an executed contract of release extinguishes any cause of action that the releasor may have against the releasee. It generally does not release any claim that the releasor may have against anyone else other than the person named as the releasee. Therefore, the adjuster should be careful to include as releasees the names of all persons who qualify for coverage under A.R.S. § 41-621.

8.3.3. Standard Release

Most liability claims are concluded by paying a lump sum and obtaining a standard release.

It is important in all jurisdictions to have both husband and wife sign the release even though only one was injured. The settlement may include a sum paid for the loss of consortium claim of the uninjured spouse, and therefore both signatures are required. If the settlement did not

include a loss of consortium claim, both signatures will preclude such a claim later.

If the release is not required to be notorized, a disinterested witness must sign as a witness to the signature of each claimant. Complete addresses of witnesses should be included in case there is a need for future contact. A witness should not be related to any of the parties nor be employed by the State of Arizona. (See Forms Manual for release templates)

8.3.4. Claims of Minors

Claims of minors are settled in one of two ways: by obtaining a "Parents Release and Indemnifying Agreement" signed by the parents or guardians of the minor claimant or by a court approved settlement.

1. Parents Release and Indemnifying Agreement

   The Parents Release and Indemnifying Agreement is intended to be a general release of both the parent's and the minor's claims, and also contains an affirmative agreement by the parents to indemnify and hold harmless the defendant against all loss resulting from future claims brought by or on behalf of the child.

   It is generally agreed the release effectively releases all claims of the parent because of injury to the child. However, the legal effect of the indemnification provision is open to question as to whether parents can release the minor's claim. Indeed, some jurisdictions have invalidated the use of indemnifying releases.

   Because the legal significance of the indemnifying release is in question, the possibility exists that the form does not release the minor's claims and that the

indemnifying provisions would be unenforceable. Therefore, a Parents Release and Indemnifying Agreement should only be used when there is no residual permanent disability. (See Forms Manual for release templates)

2. Court Approved Settlements

A minor's claim settled with court approval constitutes a full and final disposition of the claim. Therefore, any minor's claim that involved residual permanent disability should be settled with court approval rather than a Parents Release and Indemnifying Agreement.

8.3.5. Limited Open-End Releases

Settlement by way of an open-end release involves a final disposition of the claim except that Risk Management agrees to pay additional medical expenses arising from the accident for a specific period of time. Maximums, both as to time and amount, are stipulated within the release with respect to future payment. (See Forms Manual for release templates)

An Open-End Release is used when:

- A regular release cannot be obtained without paying something additional for possible but unlikely future medical expense.
- The amount allowed for future medical expense does not exceed $2,500 and the time limit for presenting additional medical bills does not exceed one year from the date of release.
- The Claim Supervisor must approve this method of settlement.

8.4. Settlement Authority

8.4.1. Introduction

All requests for settelment authority are to be routed…. Once the Director and the Attorney General have approved the authority request, negotiations can begin. Settlements in excess of $250,000 must be settled *subject to JLBC approval*, and then the case will be placed on the agenda for the next scheduled Joint Legislative Budget Committee meeting.

AUTHORITY	SETTLEMENT AMOUNT
Admin Staff and Claim Specialist	Up to $5,000
Claim Adjuster l	Up to $7,500
Claim Adjuster ll	Up to $20,000
Claim Supervisior	Up to $25,000 ($100,000 property)
Asst. Claim Manager	Up to $35,000 ($100,000 property)
Claim Manager	$35,001 up to $100,000
State Risk Manager Attorney General	• $100,000 up to $250,000
State Risk Manager Asst. Director for FSD (unless authority is deferred to the State Risk Manager) Attorney General Joint Budget Legislative Committee (JLBC)	Greater than $250,000

All requests for settlement authority are to be routed through the adjusters supervisor. If the request is for $100,000 or less the request should be made in the form of a full captioned report, providing sufficient detail from which an informed decision can be made. On requests for authority in excess of $100,000, a Draft Rule 14 document is to be prepared by counsel and will be submitted to the director of Department of Administration and the Attorney General at the same time. Once the Director and the Attorney General have approved the authority request and have reached an agreed settlement amount with the claimant/plaintiff, subject to Joint Legislative Budget Committee approval, the case will be placed on the agenda for the next scheduled Joint Legislative Budget Committee meeting.

We must be very careful in making sure that the Agency Response for potential remedial action is in the Rule 14 document.

When the Attorney General's Office declares a conflict, they will immediately assign Outside Counsel to represent Risk Management. All handling is completed by the adjuster, in consultation with outside counsel. There is to be no discussion or communications with the Attorney General's Office. If the settlement exceeds $250,000, Risk Management will prepare and distribute the Rule 14 packages directly to the Joint Legislative Budget Committee members. The Risk Manager will present the case to the Committee with the assistance of outside counsel and the adjuster.

8.4.2. Joint Legislative Budget Committee

Attached as an exhibit is a copy of Rule 14 of the Joint Legislative Budget Committee Rules which detailed the

procedures relating to presentation of claim settlements for approval by the committee. *Reference exhibit: Rule 14 format and approved JLBC Rules in Section 8- Payments and Settlements*.

JOINT LEGISLATIVE BUDGET COMMITTEE (JLBC) must be notified before settlement negotiations begin on settlements that exceed the State's Self-Insured Retention (SIR). Typically, a Rule 14 Summary is submitted to the committee for review.

8.4.3. Signature Authority

A signature authority sheet is to be submitted on all cases in which authority in excess of $25,000.*Reference exhibit: Signature Cover Sheet in Section 8 - Payments and Settlements.*

All pertinent information should be included and attached. The purpose of this sheet is to ensure that the proper authority has been granted prior to settlement offers being set forth.

Reference additional exhibits in Section 8- Payments and Settlements:

- **Envision To-Be-Paid Screen**

  - Payment Codes

- **AG Approval for Legal Bills**

- **Settlement Conference Participation Memo**

8.5. EXHIBITS: PAYMENT AND SETTLEMENT

A. NOC Flowchart

B. Lawsuit Flowchart

C. State not subject to the Unfair Claims Practice ACT

D. Rule 14 Format

- Approved JLBC Rules

E. Signature Authority Sheet

F. Envision To-Be-Paid Screen

- Payment Codes

G. Settlement Memo

H. Outside Counsel bills – Approved Stamp

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Outside Counsel bills - Approved Stamp (H)

Payment Codes (F)

Rule 14 Format (D)

Settlement Memo (G)

Signature Authority Sheet (E)

State not subject to the Unfair Claims Practices Act (C)

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Section: Payment and Settlements

9. Structured Settlements

9.1. Structured Settlements

9.1.1. Introduction

A structured settlement is an approach to settling injury cases that generally combines an up-front payment with payments over time, rather than through a single lump-sum settlement. Usually, structured settlements are funded through the purchase of an annuity or a series of annuities and are an effective, cost saving approach which can often times better meet the claimant's present and future financial needs.

In general, structured settlements based on an annuity program have proven to be more financially attractive for resolving large claims than the traditional lump sum approach. When designed and negotiated properly, such settlements provide significant benefits to all parties involved; the defendant, the claimant and the claimant's attorney.

The defendant benefits from substantial cost savings, in that the structure provides the ability to present a more attractive settlement package thus facilitating a resolution to difficult settlement situations.

The primary benefits to the claimant are the tax exempt status of structured settlements, guaranteed periodic income to satisfy present and future financial needs and protect the claimant from unscrupulous persons who might want to divert a lump sum settlement for their own ends, and finally to relieve the claimant of the burden and risk of managing a large sum of money themselves.

The claimant attorney can also structure the legal fees which may provide some tax advantage. *Reference exhibit: Structured Settelment – General Information in Section 9 - Structured Settlements.*

9.1.2. When to Consider a Structured Settlement

Structured settlements can be used in any size or type of case. However, the primary types of cases that lend themselves to resolution through structured settlement arrangements include:

- Serious injuries - typically involving claimants with identifiable and long-term need due to permanent disabilities requiring on-going medical care and/or impaired earning potential.
- Minors or incompetents - consisting of claimants unable to manage their own affairs and in need of long-term financial protection.
- Wrongful death cases - involving survivors who have lost the income of a spouse, parent or supporting child; or who represent the estate of the deceased.

9.1.3. Structured Settlement Companies

There are many structured settlement companies, some of which provide a number of different services as well as provide a conduit to the life insurance companies writing structured settlement annuities. Some of the services provided by these companies include, expert economic evaluations, damage analysis, settlement negotiation services, post settlement services (document preparation) and expert trial testimony. These companies are all capable of providing all services we require and have

access to the major carriers. Assignments are being made on a rotating basis. If you have a case in which the services of a structures settlement company are needed, check the Structured Settlement Vendor list to determine which company is next on the rotation. (See the Clerical Supervisor). *Reference exhibit: Structured Settelment Assignment Log in Section 9 - Structured Settlements.*

9.1.4. Quote Information

There is a great deal of flexibility inherent in annuities which allows the structuring of it's payments to fit the specific needs of almost any situation. The more specific information that can be developed about the claimant and that individuals needs the better. *Reference exhibits: Quote Information Sheet and* What is a Structured Settlement in Section 9- Structured Settlements.

9.2. Mandatory Requirements

9.2.1. Mandatory Requirements

The following items must be completed by the Adjuster and our Counsel, in order to avoid any misunderstandings by a claimant or claimant attorney with respect to structured settlements.

1. All structures settlements will be written by top rated life insurance companies.
2. The claimant or claimant attorney will be advised in writing of the financial rating of the life insurance company writing the annuity.
3. All annuities MUST be reassigned thus relieving the State from any potential contingent liability problems

should the life insurance company be unable to fulfill its obligations at some time in the future.

4. The release document must clearly state the State of Arizona has no further obligation once the annuity has been purchased and reassigned. To insure that the release document is clear and unambiguous, the following language is to appear in all release documents:

   After payment of cash portion of the settlement and purchase of the annuity contract/s, the State of Arizona shall have no further obligation to the claimant(s).

9.2.2. File Retention

Upon receipt of the finalized annuity contract the adjuster is to file the annuity contract, assignment and all settlement documents in the annuity contract file cabinet (Phoenix Office). Those documents will be kept permanently and will not be destroyed. A copy of the release documents annuity contract is also to be filed in the claim file. *Reference exhibits: Annuity File Spreadsheet and Sample Annuity File Retention Report in Section 9 - Structured Settlements.*

9.3. EXHIBITS: STRUCTURED SETTLEMENTS

A. Structured Settlements – General Information

B. Structured Settlement Assignment Log

C. Annuity Information Sheet

D. Annuity File Retention Report – Sample

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10. Medical

10.1. Independent Medical Examinations

10.1.1. Introduction

The claims of disability and the necessity for medical treatment can be verified by having the claimant examined by a independent physician. The examining physician will verify the history of the accident, and the claimant's past medical history and present condition. The examining physician will express an opinion on the causal relationship between the claimant's present condition and the alleged accident, an opinion as to whether or not the claimant is disabled and whether any further treatment is needed, if so, for how long.

Prior to litigation the claimant is not required by law to submit to a medical examination. Often times, the claimant and/or the attorney will agree to an IME because the examination is a necessary part of the investigation which may lead to a settlement. In the absence of an examination by an independent physician, the State will have no evidence to contradict the testimony of the attending physician. Therefore, prior to litigation, the claimant or the attorney sometimes promise an examination but the claimant fails to appear. This is one of the earmarks of a possible buildup of the disability issue and, where it is recognized, the investigator should consider an activity check, either through a neighborhood survey, surveillance, or video as the necessity of the case demands.

Where the claim is in litigation, the defendant is entitled to at least one physical examination as part of the discovery or disclosure proceedings. This is a matter of right, and if

the claimant refuses, they can be compelled to submit to the examination by means of a court order.

Where it is conceded that the claimant has fully recovered, and this is supported by an affidavit or certification from the doctor, there would be little point in conducting an examination; the State is sufficiently protected against any further claims by either of these statements. If a further claim is made, then the adjuster can consider the advisability of an examination. Where it is conceded that the claimant has recovered and does not require further medical treatment, but that they have sustained some permanent injury then an examination may be requested.

When it is decided that a medical examination is necessary, the following factors should receive consideration: (1) the time of examination, (2) extent of examination, (3) selection of the medical examiner, and (4) the report of examination.

10.1.2. Time of Examination

The first decision is the time the examination should take place. Should it be conducted immediately or be deferred to some future date, and, if so, how long should it be deferred? It is elementary that the examination should obtain information as to the claimant's physical condition. Therefore, it should take place at a time and under such circumstances as will produce the maximum information.

As to cases where examination can be made, the answer to when it should be made will depend upon what the adjuster desires to accomplish by having it. Where there is some question as to the extent of an injury, the earlier the examination is conducted the better, since it is essential the adjuster have a complete picture of the injury, its

extent, and potential. Also, where there is a question as to the amount of treatment required, an immediate examination can act as a deterrent to overtreatment and extended disability. It should be emphasized again that in the absence of verification of the claimant's injury and the need for medical treatment, the statements of the attending physician stand as the only evidence on these two points.

In every case, there will be an interval between the date of the accident and the examination. As to that interval, reliance will have to be placed on the report of the attending physician because no other medical evidence is available. The longer this interval is, the longer the claimant will have uncontrovertible proof of disability and of the necessity for medical treatment. Because of these considerations, an early examination is a definite requirement where the matter of disability or of the necessity for medical treatment is an issue.

Where the adjuster is satisfied that the case is in good hands, and that there is no tendency on the part of the attending physician to overtreat, there would be reason to defer the examination until the treatment is concluded in order to have the examination show the final result and whether or not there is any permanent condition present.

The adjuster is not always restricted to having only one examination in each case. It may well be that arrangements can be made for a preliminary examination and for a final examination at a later date. Where this is evident, it might have some influence on the adjusters thinking as to the time of the first examination.

10.1.3. Extent of the Examination

This will vary with the type of case and the objective to be accomplished. In every case, whether the examination is made by a specialist or a general practitioner, the irrespective of the objective, the adjuster should see the examiner is given all the information in the file as to the causation of the injury, the exact injuries claimed, whether or not the claimant was hospitalized, the type of treatment or operation performed, whether or not diagnostic tests were taken, and the result thereof. If a copy of the hospital record has been obtained or a certificate received from the attending physician, the examiner should be furnished with a copy.

If x-rays/MRIs were taken, arrangements should be made with the attending physician to make the original image available to the examiner. In appropriate cases, the examiner should be authorized to take x-rays/MRIs especially where the originals were positive and some time has elapsed since they were taken. In this way, the examiner can give an up-to-date opinion as to the progress of the healing process. Also, where x-rays/MRIs are unsatisfactory, either because they were improperly taken or misinterpreted because of some defect in the image, the examiner should have comparative x-rays/MRIs in order to reach a definite conclusion. Usually, the authorization for taking x-rays/MRIs is not given on a blanket basis, but each case is considered in light of its own particular facts and the need for new x-rays/MRIs, and the examiner is required to obtain authorization in each case where there is a need for a new image. The giving of a blanket authorization not only increases the cost of the examinations, but the x-rays/MRIs may frequently disclose other conditions, not being claimed, as additional results of the accident. Thus, when the x-rays/MRIs are produced,

an additional claim may be advanced. Authorization for d x-rays/MRIs is not given unless some purpose useful to the defense can be achieved, but in any case where there are x-rays/MRIs the examiner should see the original images rather than rely on the findings of another physician as to what they disclose.

The same criteria apply to other tests, such as blood tests, electrocardiograms, basal metabolism tests, encephalograms, and myelograms. They are authorized if they will serve some purpose in producing a more complete examination or in uncovering some condition, unrelated to the accident, which may be used as a defense on the theory that the condition and not the accident is the cause of the claimant's disability.

The examination is not necessarily restricted to the findings of one physician. There can be more than one doctor participating, especially in cases where there are multiple injuries, each coming within a different specialty. For example, if the claimant is suffering from a fractured skull and claims some eye complications such as diplopia (double vision), it might be necessary to have the claimant examined by an eye specialist in addition to the general examination. The extent and number of the specialists, who will be called in on the case, will depend upon the particular facts of the case and the objective to be achieved.

10.1.4. Causation

Obviously, in order to recover for an injury the claimant must sustain the injury as a result of the accident. The claimant may be suffering from some preexisting condition which bears no relationship to the accident and may not be able to recover. The claimant may have a pre-existing

condition which has been aggravated by the accident, in which case, theoretically at least, they should recover for the period of aggravation, and the disability should cease at the termination of that time. Unfortunately, a line as fine as this cannot be drawn, and the condition never returns to its former state. In such cases the defendant might be responsible for the entire condition.

In all cases, where the defendant is alleged to be responsible, there must be a definite chain of causation leading from the accident to the ultimate injury claimed. In determining whether or not there is this chain of causation, our examining doctor must have all the facts. These include the history (the facts of the accident), hospital records, reports of attending physicians, diagnostic and laboratory tests. Medical diagnosis depends upon a review of all the facts and examination of the patient with special reference to objective and subjective symptoms. Objective symptoms are those that can be seen or verified by the use of diagnostic tests. Subjective are the complaints made by the patient. The latter, of course, can easily be fabricated. In some cases, there is an interval between the trauma and the first physical manifestation of the injury or disease. It is important to cover this point in the claimant's statement, indicating when the first time any discomfort was experienced. Obviously, the longer the interval of time between the trauma and the onset of symptoms, the less the likelihood of any relationship between the two.

Therefore, when a case is referred to our examining doctor, all previous medical information obtained should be provided. This will consist of hospital records, x-rays/MRIs (if not the images, at least a copy of the findings), past medical history, reports of doctors treating such past conditions, a concise by complete statement of how the accident occurred, the injuries complained of, the

symptoms claimed (both subjective and objective), and the kind and type of disability claimed. The more information and factual data the doctor has, the more accurate the opinion on disability and causal relationship will be.

Certain injuries are so definite that they can be demonstrated by clinical examination or diagnosed by the use of diagnostic tests and other means. Head and back injuries pose a particular diagnostic problem and it is in this area that most fraudulent or malingering claims will be found.

10.1.5. Selection of the Medical Examiner

Many doctors, otherwise competent, make poor witnesses in court. They may be inarticulate or may have a gruff and uncompromising personality or other characteristics which may influence the jury unfavorably. The first requisites include a pleasing personality, the ability of expression, and the facility for expressing technical medical terms in layman's language.

The examiner must have medical knowledge sufficient to make an accurate appraisal of the injuries, the need for treatment, and the prognosis for future recovery. The examiner must report the findings accurately and must not be inclined toward optimism, or to minimizing the injury, merely because they are examining for the defendant. The examiner should be capable of reporting the injuries when identified, whether such findings are favorable to the defendant or not. An accurate estimate of the potential of the case cannot be made when the medical report is misleading, and in some cases an attractive settlement possibility will be turned down because of an inaccurate medical report.

The same considerations should influence the selection of specialists who are needed in certain situations, but their qualifications also should be such that they are not open to attack. They should have relationships with hospitals in their particular specialty and be able to support their position as a specialist by showing education, certification and experience beyond that held by the ordinary general practitioner.

The adjuster should consult with the Supervisor and/or the assigned attorney when selecting a physician.

10.1.6. Report of Examination

A satisfactory medical report will contain, as a minimum, these five items: (1) history, (2) findings, (3) causal relationship, (4) prognosis, and (5) opinion.

HISTORY - The examiner should elicit as complete a statement as possible from the claimant as to how the accident occurred, what parts of the body were injured, what pain was suffered, when the first signs of pain occurred (whether simultaneously with the accident or some time thereafter), whether or not claimant was unconscious, who provided medical treatment and when, t, and the number and kinds of treatment received since that time.

If the history differs in any way from the information supplied by Risk Management as to the causation of the injury, the examiner should make some effort to reconcile the differences if possible. The information gained might assist in the further investigation as well as bring to light any questions which may exist as to the medical treatment.

FINDINGS - The actual results of the examination should be detailed, setting forth the claimant's complaints and

stating whether or not they are substantiated by any objective findings. The report should indicate what tests were made by the examiner and the claimant's reaction to each.

CAUSAL RELATIONSHIP - The examiner should state whether or not all the injuries complained of are related to the accident, The examiner should state whether there is any evidence of a preexisting injury or disease, and if so, whether this condition was aggravated by the accident.

PROGNOSIS - The examiner should state whether the claimant has fully recovered or whether further medical treatment is required. If the claimant is still disabled, some estimate of future disability should be made, and if further treatment is necessary, an estimate of the period of time needed, together with the nature and the frequency of such treatment The examiner should also comment as to whether or not the injuries will produce a permanent condition and if so the nature and extent of the permanency. If it consists of a restriction in motion of any member, the examiner should express the loss of use in terms of a percentage as compared with normal motion. Where facial scarring is involved, the report should contain a photograph, a description of the scar as it now exists and an opinion as to whether it will improve by bleaching out with the passage of time, if so, the residual result which can be expected. If cosmetic surgery will improve the condition, the examiner should express an opinion as to the possible result, the nature and extent of the surgery, and the approximate cost.

OPINION - The examiner should give an opinion as to the prior treatment and if effective, make recommendations for further treatment, and document any permanent injuries

and limitations the claimant has in relation to the ability to work and future enjoyment of life.

10.1.7. Medical Knowledge in Relation to Personal Injury Claims

In the evaluation and settlement of personal injury claims, the objective is to measure the extent of the injury in terms of money. To accomplish this, the adjuster must have a working knowledge of anatomy and the effects of an injury upon the human body. Clearly, the adjuster is not expected to have the knowledge of a medical practitioner, but must have some familiarity with conditions caused by accidents, and what these conditions mean in terms of causation, treatment, pain and suffering, as well as disability, both temporary and permanent.

To properly understand and evaluate this medical information the adjuster must know and understand all the terminology used, how and why certain tests are made, and the significance of the conclusions expressed.

In order to obtain medical records the patient must sign a medical authorization release. Most of the healthcare providers will accept a properly executed RM Medical Authorization. However, a few have elected to accept only their approved form.

Exhibits:

- ADOA Information regarding HIPPA
- RM Medical Authorization, AG Approved February 2004
- Cigna Medical Authorization

- Maricopa Intergrated Health System Medical Authorization
- Banner Health Medical Authorization

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10.2. EXHIBITS: MEDICAL

A. ADOA Information Regarding HIPPA

B. RM Medical Authorization, AG approval February 2004

C. Cigna Medical Authorization

D. Maricopa Integrated Health Systems

E. Banner Health

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DEPARTMENT OF ADMINISTRATION
LIABILITY MANUAL

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11. Medical Malpractice Claims

11.1. (Reserved)

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