

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS

FROM: W. Joseph Truce

DATE: September 4, 2001

RE: COURT OF APPEALS DECISION MANDATING THAT AN INSURANCE COMPANY MUST SET RESERVES AT THE REASONABLE EXPECTATION OF A CLAIM'S VALUE

In affirming a 6.3 million dollar bad-faith judgement against the Republic Indemnity Company of America, the Court of Appeal has ruled that "as to reserves . . . they must be set at the reasonable expectation of the claim's value. . ."

For everyone's review I am enclosing a copy of the Court of Appeal Decision in **Lance Camper Manufacturing Corporation v. Republic Indemnity Company of America**.

The Court of Appeal noted in its decision that commencing in 1986 the plaintiff, Lance Camper, purchased a series of one-year policies from Republic and each policy Republic issued to Lance Camper is provided in relevant part as follows:

"Republic has the right and duty to defend at Republic's expense any claim, proceeding, or suit against you for benefits payable by this insurance . . ."

The Court further noted that none of the Lance Camper's policy years ever involved claims expense that exceeded the premiums paid by Lance Camper.

Notwithstanding Lance Camper's annual premium rose to over \$500,000 and Lance Camper ultimately chose to become self-insured on February 5, 1990.

In discussing the training for the Republic claim's staff the court noted as follows:

"Republic had no written procedures concerning diary slips or claims files, and no training course as to how to handle claims files. Many (but not all) Republic employees acknowledge the absence of any written procedure or claims manual. It was considered very unusual for an insurance company not to have a claims manual. One of Republic's assistant claims managers asserted that Republic did not need a claims manual because "we believe in communication" . . ."

INTER-OFFICE MEMORANDUM

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September 4, 2001

Page 2

The Court decision goes on to note that although Lance Camper tried to take advantage of this "open communication policy Republic had an unwritten policy to refuse sit-down reviews with insurers that no longer had active policies with the company. . .".

The Court further noted that 'Republic also denied its insurers the right to examine original claim files because as one claims' manager's memo explained, it was "our first level of defense".'

According to the decision Lance Camper requested several times to have a "sit-down claims review" and Republic finally agreed. However, Republic also advised Lance Camper that it would not allow their representative "to see the files during the review. . .".

At this point the Court of Appeal notes that "Lance Camper sought advise from Wramasco regarding what questions asked at the review. . .".

The Wramasco Company at that time specialized in insurance consulting and the representative from Wramasco that was contacted by Lance Camper was none other than Marilyn Murata who is currently the President and owner of Integrated Claims Administrators. Marilyn advises me that she advised Lance Campers that were entitled to review the Republic files and to document their request in writing. These letters authored by Marilyn Murata were entered into evidence in this case.

As to the major issue of the setting of reserves the court noted as follows:

". . . it is a task that requires the exercise of judgement and is not an exact science. Insurers have discretion in setting reserves and there is an acceptable range of reserves a carrier can set without incurring liability. . .".

In Lance Camper Republic apparently set the reserves for Lance Camper on a worse case scenario basis or in other words reserved the Lance Camper cases based on the medical reports obtained by the applicant's and/or their attorneys. As a result in this increase in reserves, Lance Campers' annual premium as noted above increased to over \$500,000.00.

In ruling that Republic incorrectly set reserves on the Lance Camper cases the Court of Appeal held that it is impermissible to set reserves "with a worse case scenario analysis" and affirmed that the

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OF A CLAIM'S VALUE**

September 4, 2001

Page 3

current standard in setting reserves is that “reserves be set at the reasonable expectation of the claim’s value. . .”

WJT:wf

Enclosure- Decision of Lance Camper Manufacturing Corporation