

## WHAT ARE ANTITRUST LAWS?

### WHY DOES A CLAIM SUPERVISOR NEED TO KNOW?

All of you have heard the word antitrust and you probably thought that it applied to the “IBM’s” of the world but not to Joe Adjuster or John Supervisor. If your thoughts were this narrow, you may be in for a “big” surprise.

First, you should know that insurance companies and their employees are not totally exempt from the restrictions and the regulations of the Federal and State antitrust laws. The McCarran-Ferguson Act allows only a narrow exemption to the insurance industry which is very technical and is not uniformly applied by all Federal Courts. The technicalities of the exemption are beyond the scope of this paper and talk.

This paper and talk will deal with the application of antitrust to you in your day-to-day work.

As unfortunate as it may seem, you must learn something about the McCarran-Ferguson Act. First it only gives the insurance industry an exemption for those activities which constitute the “business of insurance” and only if such activities are “regulated by state law”. 15 United States Code Section 1013(b). Furthermore, the McCarran-Ferguson Act does not apply to conduct amounting to a boycott. 15 United States Code Section 1013(b).

If you thought the McCarran- Ferguson Act (hereinafter simply McCarran) provided the industry a broad exemption against antitrust laws, you were not alone; but, ignorance of the law will not protect you from a very expensive personal and corporate lawsuit and perhaps -- jail. Yes, the antitrust laws do carry liability for individuals as well as the corporations or business entities.

It was in 1969 that the United States Supreme Court shocked the whole insurance industry by holding in the SEC v. National Securities, Inc. , 393 U.S. 453 (1969) that the McCarran exemption only applies to the relationship between the insurance company and the policyholder, that is McCarran protection depends upon the nature of the activity involved not simply upon the involvement of an insurance company.

In simpler terms folks, you and I are subject to antitrust when it involves certain activities even if we argue that we work for an insurance company and the matter involves our policyholder. This was made abundantly clear in a 1979 and a 1982 case. In the 1979 case, the Supreme Court held that Group Life & Health Insurance Company was into conduct that was not exempt from the antitrust laws. Group Life entered into agreements with pharmacists whereby the pharmacists would limit their markup to \$2.00 to Group Life's insureds who could in turn collect 100% from Group Life; whereas pharmacists who did not agree would have Group Life's insureds collecting only 75%. See Group Life and Health Insurance Co. v. Royal Drug, 440 U.S. 205 (1979).

In the 1982 case entitled Union Labor Life Insurance Co. v. Pireno, 458 U.S. 119 (1982), the other shoe was dropped when the Supreme Court ruled that Union Labor's

plan establishing “reasonable charges” for “necessary medical care and services” by a peer review committee of health care providers was not exempted activity by the McCarran Act.

As you can see from the above two cases, we are subject to antitrust regulation at certain levels. You as claims person must be aware of these pitfalls and avoid them.

Now, I will turn my attention to an area of activity that is clearly illegal, That activity is **BOYCOTT !!**

Boycott has always been illegal !!!! There is no room for debate on the subject! You will ask what does boycott mean. Well, in general terms, a boycott is a “concerted refusal to deal.” The United States Supreme Court stated:

the generic concept of a boycott refers to a method of pressuring a party with whom one has a dispute by withholding, or enlisting others to withhold patronage or services from the target.

The Supreme Court made it crystal clear that a boycott can embrace refusals to deal with customers who are the ultimate target of the boycotters as well as the more traditional and limited notion that boycotts involve refusals to deal with competitors of the boycotters.

Let us discuss the case of St. Paul Fire & Marine Insurance Co. v. Barry , 438 U.S. 531 (1978) wherein physicians sued the four insurers writing medical malpractice insurance in Rhode Island. The physicians alleged that three of the four insurers refused to deal on any terms with the policyholders of the fourth company (St. Paul) and alleged that the boycott was intended to compel the physicians to purchase the new claims made policies rather than to renew the old occurrence policies. The Supreme Court held that this alleged conduct constituted a boycott and was therefore illegal activity in violation of the antitrust laws.

In conclusion, we can be like the three monkeys and hear no evil, see no evil and speak no evil; but such activity will not insulate you from the process server or from criminal indictment. Yes, you heard correctly, - Criminal Indictment ! So heed the warning. Think before you go to a meeting where a person jumps up and says ‘we have to shut that body shop down’ or “we must handle claims this way” or “get so and so to agree on such and such”. You should immediately leave and not agree to any such activity. DO NOT sit there and nod your head or shake your head, LEAVE! After leaving, you should consult with your corporate counsel who may want to do a memorandum on the matter for potential future use.

Finally, I am attaching a copy of the memorandum summarizing the Consent Decree involving a prohibited antitrust type action that is dated November 27, 1963 - Yes, 1963. Read it and adhere to it as well as all antitrust laws.