



# AICA BULLETIN

June 2015

Volume 13 Issue 9

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**Friday, June 12th**

**5:30 p.m.—10:00 p.m.**

**\$30.00 per person**

**Includes Taco Bar, Dessert & 2 drink tickets**

**Salty Senorita—Peoria  
8011 W. Paradise Lane  
Peoria, AZ**

**Volleyball, Horseshoes & Bean Bag Toss**

**Register online at [www.aicaonline.org](http://www.aicaonline.org)**

**Mark your calendars for our July Summer Meeting**

**Attorney Panel Discussion  
Your Claims Questions Answered by a Panel of Attorneys**

**Thursday, July 16th  
Social Hour 5 p.m.—Dinner/Meeting 6 p.m.**

**Doubletree Hotel—320 N. 44th Street, Phoenix**

**Watch for info on how to submit questions and how  
to RSVP in next month's newsletter and email blast.**

## PRESIDENT'S MESSAGE



I want to start by thanking Jeff Moore and all those who volunteered and participated in our Golf Tournament last month. It was a smashing success and I believe everyone there had a wonderful time. Great job! I can't wait for next year.

The term for the Executive Board will end this year so if you are an adjusting member and are interested in getting Involved with the AICA, please contact myself or any of the other board members for more information. Elections will be held in November.

Our Salty Seniorita event is this week and is a great way to socialize, network and just have some fun in relaxed and festive environment. Hope to see you there.

We will also be holding a meeting in July which will feature a panel of attorneys who will answer claim related questions. The August Monsoon Bowling event will also be held this summer. More information on these two events will be available in next month's newsletter.

Thank you for your continued support of this great association.

David A. Conger, RPA, RGA  
AICA President  
[president@aicaonline.org](mailto:president@aicaonline.org)

## AICA MEMBERSHIP

### ANNUAL MEMBERSHIP FEES:

- Carrier Adjuster - FREE
- Independent Adjusters - \$25.00/year
- Associate (Service) Member- \$75.00/year

Memberships are INDIVIDUAL. If multiple persons from your company wish to join, each will have to purchase a membership

To join the AICA or renew your membership, click on this link:

<http://www.aicaonline.org/membership.php>. Although memberships are free for Carrier Adjusters, you must still register online to activate your membership.

If you have questions about membership contact one of our Board Members located on page 7.



## ANNUAL GOLF TOURNAMENT

Dear AICA Golfers, Sponsors and Spectators,

Thank you for participating in the May 1<sup>st</sup>, 2015 Annual AICA Golf Tournament out at the Wigwam Resort in Litchfield Park, AZ. It turned out to be a wonderful success. In all, we had 292 golfers employed with 132 companies, 37 vendor sponsors, 125 raffle prizes, 400 lunch attendees and lots of help from our volunteers. Every year we get bigger, better and more efficient.

We could not have pulled off this event with the support of each of you. There was a real sense of community within our niche industry here in the Valley. We even had people fly in from out of town to attend, including people from California, Nevada, New Mexico, Oklahoma, etc. People coming in from out of state to attend this event is a testament to the hard work that the board has done these past few years, drawing the attention of our industry, event outside of the Valley of Sun, here in Arizona.

We are already in early planning stages for 2016 and are currently working on either changing the date from the 1<sup>st</sup> Friday in May and staying at the Wigwam and/or trying out a new location. Look for information about the 2015 tournament 4<sup>th</sup> Quarter of 2015.

I would like to thank the volunteers who assisted me in putting together this great event, leading up to the event and on the day of the event. This is a large group of people but I wanted to thank them all; Amber Arapovic, Ashley Sweet, Bryan Houser, David Conger, Daniel Aldana, Debye Kerbey, Eric Wingham, Jana Gutierrez, Jeff Moore, Jim Arnett, John Sweet, Jon Peterson, Josephine D'Ippolito, Logan Erickson, Matthew Thompson, Melissa Delatorre, Nicholas Bersch, Peter Carlson, Ron James, Ron Vineyard, Stephen Chrisman, Tavia Moore, Tyrin Lock and Vanessa Bragg.

A special thanks goes out to our biggest sponsor of the event, ATI. Not only did ATI help support it behind the scenes but they also picked up 4 sponsorships.

Our next biggest sponsor was the three drink hole sponsors with Absolute Restoration, BlueSky Restoration and Temporary Accommodations. Our prime hole sponsors included Donan Engineering, Syntech Environmental, Belfor, Rimkus Consulting, Frontier Adjusters and Velocity Vehicle Group.

Our hole sponsors included ATI, Aramsco, CRDN, CRS Temporary Housing, Impact Restoration, Knipp Contracting, Kowalski Construction, Professional Loss, Pronet Group, Response Team 1, Rightway Disposal, Servpro of Gilbert, Servpro of North and West Chandler and Valley of the Sun Environmental.

Our other sponsors were SilverCity Restoration, Sun Country Restoration and Integrity Contents Services.

Cordially,

Jeff Moore  
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Arizona Insurance Claims Association (AICA) - Golf Czar  
American Technologies, Inc. - Executive Vice President

## EXPERT'S CORNER—ETHICAL DECISION-MAKING WHEN CONDUCTING/DOCUMENTING INVESTIGATIONS



**Understanding the boundaries and proper procedures for maintaining the highest ethical standards.**

**By Guy E. Burnette, Jr.**

The ethical component in claims investigations is always a matter of paramount importance. The special role of a claims adjuster or investigator in determining coverage for a claim requires that there be strict adherence to the highest ethical standards under an adjuster's code of ethics and the National Association of Insurance Commissioners' (NAIC) Unfair Claims Settlement Practices Act, which is applicable in most jurisdictions. Similarly, when claims counsel is involved, those same considerations apply together with all the ethical standards of the profession under the state bar association and the American Bar Association's Code of Professional Responsibility.

### **Ethics in Claims Handling**

In certain types of claims, the role of an insurer is that of a fiduciary, and the law imposes special requirements on one who assumes that position. By its very nature, the role of fiduciary entails strict confidence, trust, and respect for the rights of another. The fiduciary is charged with the responsibility of acting in the best interests of another—the insured—at all times. Ethical conduct is not an aspiration; it is an imperative.

In other types of claims, the nature of the relationship necessarily changes. Rather than a fiduciary relationship, it may become one that is adversarial. Where the issue of coverage arises, the relationship becomes an adversarial one as a matter of course. But ethical conduct in those cases remains a priority, a prerequisite to proper coverage investigation and determination. The law makes no distinction between the two in measuring ethical compliance.

### **Adjuster's Code of Ethics**

In virtually every jurisdiction, insurance adjusters are bound by an adjuster's code of ethics. Compliance with the code of ethics is required by regulatory authorities in every state. The failure to adhere to those ethical standards will subject an adjuster to administrative sanction, which can include revocation of the adjuster's license to handle claims in that state.

Although the codes may vary somewhat by state, the adjuster's code of ethics adopted by Florida is representative. The purpose of the code is explained as follows: "The work of adjusting insurance claims engages the public trust. An adjuster must put the duty for fair and honest treatment of the claimant above the adjuster's own interests, in every instance."

The following are the standards of conduct outlined in the code that define "ethical behavior" for insurance adjusters (in summary form):

- Disclosing any financial interest in a matter.
- Treating claimants equally and in accordance with the policy.

## EXPERT'S CORNER—CONT'D

- Never acting in a manner prejudicial to the insured.
- Making truthful and unbiased reports.
- Acting with honesty and integrity, without improper remuneration.
- Acting with dispatch and due diligence.
- Promptly reporting improper conduct by other adjusters.
- Dealing carefully with elderly persons/insureds.
- Not negotiating with third-party claimants represented by attorneys.
- Interviewing witnesses fairly and objectively.
- Not advising against seeking legal advice or representation.
- Not negotiating with or interviewing persons in stress or shock from a loss.
- Advising insureds/claimants of all claims rights.
- Not drafting special releases.

Violation may be grounds for administrative action and may constitute an unfair claims settlement practice.

### Unfair Claims Settlement Practices Act

Since its creation by the NAIC more than 25 years ago, the Unfair Claims Settlement Practices Act has served as a benchmark measure of proper claims handling. In many jurisdictions, violation of the act will give rise to a civil action in the nature of a statutory bad faith claim. The Unfair Claims Settlement Practices Act is one of several models promulgated by the NAIC for states to use as a guide, in whole or in part, for enacting their own laws. Its provisions may be found in either state statute or the state insurer's regulations—or both, depending upon the state. The act's stated purpose is to "set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance[.]"

A common law action for bad faith is premised upon the same considerations as those found in the act. Indeed,



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## EXPERT'S CORNER—CONT'D

the notion of bad faith claims handling in both a statutory and common law context is in a very real sense nothing more than an allegation of unethical conduct in the handling of the claim. It is the ultimate form of enforcement action for improper claims handling.

Unfair claims practices are defined as any of the following acts committed flagrantly and in conscious disregard or with such frequency as to indicate a general business practice:

- Knowingly misrepresenting facts or policy provisions.
- Failing to promptly acknowledge communications.
- Failing to adopt standards for prompt investigation and settlement.
- Not attempting settlement of claims with clear liability.
- Compelling litigation by lowballing.
- Denials made without conducting a reasonable investigation.
- Failing to affirm or deny coverage within a reasonable time.
- Attempting to settle claims for less than the amount advertised.
- Attempting to settle claims on the basis of an altered application.
- Making claims payments without indicating the coverage basis.
- Unreasonably delaying by unnecessarily requiring a proof of loss.
- Failing to provide a reasonable and accurate explanation.
- Failing to provide forms within 15 calendar days of a request.
- Failing to assure repairs by a preferred vendor are properly done.

### Confronting the Ethical Issues

All of us have confronted ethical situations in claims handling and claims litigation. While often it is unpredictable when such a situation will arise, the potential for confronting an ethical issue is almost inevitable. It can arise in a nearly limitless number of situations but is frequently found in these areas:

- Background investigations
- Witness interviews
- Criminal histories
- Financial/Tax investigations
- Health/Medical records
- Records and document investigations
- Alibi verifications
- Loss site inspections
- Bankruptcy records
- Divorce records.

Every claim adjusted, investigated, and litigated has the potential—if not the likelihood—of raising ethical considerations for an insurer and its representatives and counsel. An awareness of the ethical boundaries of claims investigation and the proper ethical procedures for conducting an investigation and litigating a claim is essential. At every step, the question must be asked, “Is this the right thing to do?”

As with most ethical decisions, the answer most often comes not from a prescribed code of conduct, but from an inner sense of right and wrong.

*Guy E. “Sandy” Burnette Jr., Esq. is the president and principal of Guy. E. Burnette Jr., P.A. He has been a CLM Member since 2012 and can be reached at (850) 205-0480 or [geb@gburnette.com](mailto:geb@gburnette.com), [www.gburnette.com](http://www.gburnette.com).  
Article from Claims Management Strategies for Successful Resolution - January 28, 2015*

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