

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of	)	
<b>American National Property</b>	)	Docket No. 3623-SO
<b>and Casualty Company</b>	)	

**FINAL ORDER**

Now on this 20th day of February, 2009 this matter comes on for announcement of the decision on the question of when liability of American National Property and Casualty Company (“ANPAC”) became reasonably clear in the above captioned matter.

The Petitioner, Kansas Department of Insurance (“KID”) appears by Zachary J.C. Anshutz and Susan Ellmaker. The Respondent appears by Nick Hillyard. There were no other appearances.

**PROCEDURAL STATUS**

This matter was heard by the Hearing Officer and a decision rendered on the 7th day of September, 2007. The Hearing Officer found that ANPAC did not conduct a sufficient investigation of the claim as required by K.S.A. 40-2404(9)(d), that ANPAC’s responses to KID inquires were not adequate to meet the requirement of K.A.R. 40-1-34, and that ANPAC violated the Unfair Claim Settlement Practice Act by not making payment or offering to settle a claim for which liability which had become reasonably clear. Respondent perfected a timely appeal of the decision to the District Court of Shawnee County. The District Court affirmed the rulings of the Hearing Officer that ANPAC did not conduct a sufficient investigation of the claim and that ANPAC’s responses to KID inquires were not adequate and remanded the matter to the Administrative Hearing Officer for determination of when liability became reasonably clear.

## **ISSUE**

When did ANPAC's liability for the claim in the above captioned matter become reasonably clear?

## **DECISION**

In this matter, the hearing Officer must determine when liability for damages resulting from a car accident became reasonably clear. ANPAC denied liability for the claim until the insured was found to be liable in the civil matter. ANPAC's position is based on the statement of their insured and their own investigation.

ANPAC contends that the opinion of the officer who investigated the matter should not be considered. While not a witness, the officer is trained accident investigator and is independent of the parties. His testimony, while not alone conclusive on the question of liability, must be considered.

ANPAC next contends that the guilty finding entered against its insured in Leavenworth County municipal court does not alone establish ANPAC's liability for the damages. Giving ANPAC the benefit of the doubt, this Hearing Officer finds that the guilty finding alone does not necessarily establish clear liability but it must be considered.

Taking into account the totality of the evidence in the case, the Hearing Officer finds that had ANPAC reopened its file when requested to do so by the Department of Insurance and conducted an adequate investigation, it would have found clear liability prior to the Leavenworth County court case. The District Court affirmed the decision of this Hearing Officer that the failure of ANPAC to reopen the case and participate with the Kansas Department of Insurance in a search for the truth constituted a violation of K.S.A. 40-2404(9)(d). ANPAC's violation of the

law cannot be used as a shield to protect it from the discovery of clear liability. The failure of ANPAC to reopen its investigation on or about October 22, 2005 amounted to a tacit admission on its part that liability was reasonably clear. Otherwise, ANPAC would have cooperated with the Department of Insurance as required by law. While the Hearing Officer could have found that clear liability was established at the conclusion of the criminal case in Leavenworth County, the Hearing Officer has given ANPAC the benefit of the doubt. Without doubt, however, liability became reasonably clear when ANPAC failed to reopen its investigation.

**IT IS SO ORDERED ON THIS   9th   DAY OF APRIL, 2009 IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



Prepared by:

  /s/   Zachary J.C. Anshutz  
Zachary J.C. Anshutz 1 #21861  
Kansas Insurance Department

  /s/   Robert M. Tomlinson  
Robert M. Tomlinson  
Hearing Officer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she served a true and correct copy of the above and foregoing Final Order on this   9th   day of   April  , 2009, by placing the same in the United States Mail, first class postage prepaid, addressed to the following::

Nikki Cannezzaro  
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and by hand-delivery to the following:

Susan Ellmaker  
Staff Attorney  
Zachary J.C. Anshutz  
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\_ /s/ Jana L. Beethe \_\_\_\_\_  
Jana L. Beethe  
Legal Assistant