

It's Not the Bark, it's the Bite

Why it's important to aggressively defend your business at any Regulatory Board Hearing

By: [Scott J. Richardson](#)

Many Arizona businesses have a regulatory agency, board or commission that governs their professional activity. These agencies adopt regulatory rules and, in the case of some agencies, prescribe minimum work standards. Enforcement of these laws or rules primarily is from one of two sources:

- a complaint directly by the regulatory agency/board or
- a complaint brought by a consumer.

When faced with a consumer generated complaint before your business's Arizona regulatory agency, consider whether your general liability insurer should or will cover your defense before the agency. It is unlikely that a consumer will obtain monetary damages from the regulatory agency. At first glance, an insurer may respond that since monetary damage is not sought nor can it be granted by the regulatory agency, they need not defend you company under its policy. However, if the agency or board has judicial authority to render findings of fact and conclusions of law, under Arizona law those finding may be given preclusive effect in a subsequent lawsuit by the consumer against your business. [JW Hancock v. Registrar of Contractors, 142 Ariz. 400, 690 P.2d 119 \(App.1984\).](#)

What this ruling clarifies is the findings of the regulatory agency may translate to the subsequent lawsuit and no further proof may be required. In other words, what happened at the regulatory agency may limit the ability to defend your company in a lawsuit against certain claims. It is important your company has a full and complete defense in front of the regulatory agency or board hearing.

Many times the regulatory agency hearings and decisions are the start of the civil trial on your company's liability! When presented like this, your insurance company should decide to defend you before the regulatory agency to avoid having adverse findings that may hurt their ability to defend your company in a subsequent lawsuit. Additionally, the insurance carrier may provide, under your policy, an attorney to represent and protect your company at the regulatory hearing.

Presenting these issues to your carrier will require some finesse. However, it is likely that it may result in a short cut to a happy resolution of claims, an opportunity to settle the claims without the stress of a lawsuit and allow you to get back to what you do best - managing your business.

To determine what is the authority of the regulatory agency or board that governs your business we would recommend visiting the agency's website or contacting the agency telephonically. For example, the Office of Pest Management has information on their site including a complaint process summary on their website <http://www.sb.state.az.us/index.php>. Another example is the Registrar of Contractors which has a comprehensive menu of the legal process on their website. http://www.azroc.gov/Legal_menu.html. ROC is one of the agencies that their findings will translate to civil courts. If you cannot determine whether or not the agency's determination or findings will have preclusive effect in a subsequent lawsuit, then we recommend talking to your trade association or an attorney that is knowledgeable in either insurance coverage law or administrative law.

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