

STATUTES CITED IN 94-002

ARS 20-682(A)

ARS 20-685

ARS 20-685(J)



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

February 28, 1994

Chris Herstam, Director
Department of Insurance
2910 North 44th Street
Suite 210
Phoenix, Arizona 85018

Re: I94-002

Dear Mr. Herstam:

Your predecessor asked whether the Arizona Life and Disability Insurance Guaranty Fund ("Fund") must pay death benefits that exceed one hundred thousand dollars. We conclude that, if the contractual obligations of an impaired insurer exceed one hundred thousand dollars, A.R.S. § 20-685(J) requires the Fund to pay death benefits that exceed one hundred thousand dollars. The Fund must not, however, pay an amount that exceeds three hundred thousand dollars with respect to any one life. Id.

If an insurer is determined to be an "impaired insurer," the Fund's Board of Directors may guarantee, assume, or cause to be guaranteed, assumed, or reinsured the covered policies of the insurer. A.R.S. § 20-685. Covered policies include life insurance and disability insurance policies and annuity contracts. A.R.S. § 20-682(A). The Fund's obligation to the policyholders is set forth in A.R.S. § 20-685(J) as follows:

The contractual obligations of the impaired insurer for which the board becomes or may become liable shall be as great as, but no greater than, what the contractual obligations of the impaired insurer would have been in the absence of an impairment However, the aggregate liability of the board shall not

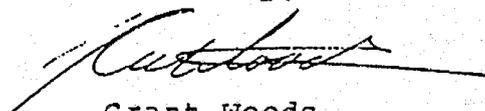
Chris Herstam, Director
February 28, 1994
Page 2
I94-002

exceed one hundred thousand dollars with respect to cash value or annuity claims or three hundred thousand dollars for all benefits, including cash values and annuity claims, as well as death benefits, with respect to any one life.

The statute expressly limits the Fund's liability to one hundred thousand dollars with respect to cash values and annuity claims and an aggregate of three hundred thousand dollars for all benefits. "It is a familiar if overused rule that a statute's expression of one or more items of a class indicates legislative intent to exclude unexpressed items of the same class." Hernandez v. Arizona Board of Regents, 156 Ariz. Adv. Rep. 43, 46 (Sup. Ct. Jan. 13, 1994); see also Greves v. Ohio State Life Insurance Co., 170 Ariz. 66, 74, 821 P.2d 757 (App. 1991); Pima County v. Heinfield, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). The statute expressly prescribes the Fund's obligations as follows: cash values must not exceed one hundred thousand dollars; annuity claims must not exceed one hundred thousand dollars; and all benefits, including cash values, annuity claims, and death benefits must not exceed an aggregate of three hundred thousand dollars for any one life. By expressly applying the one hundred thousand dollar limitation to cash values and annuity claims, the statute excludes other policy benefits from this limitation. Accordingly, other benefits, including death benefits, are subject only to the aggregate limitation of three hundred thousand dollars.

If the Legislature had intended to include other benefits within the one hundred thousand dollar limitation, it could have prescribed that the aggregate liability of the board not exceed one hundred thousand dollars with respect to cash value or annuity claims or other benefits. Since the statute applies the one hundred thousand dollar limitation only to cash value and annuity claims, we must conclude that the Legislature did not intend a similar limitation on death benefits.

Sincerely,



Grant Woods
Attorney General

1631I