

1  
2  
3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF ARIZONA**  
5

6 CARL ARNAL, *et al.*, ) CIV 04-1563 PHX JWS (LEAD)  
7 Plaintiffs, ) CIV 04-539 TUC JWS  
8 v. ) **(Consolidated)**  
9 TRAVELERS PROPERTY CASUALTY ) **FINDINGS OF FACT AND CONCLUSIONS**  
10 INSURANCE COMPANY, *et al.*, ) **OF LAW**  
11 Defendants. )  
12 \_\_\_\_\_ )  
13 NEWCASTLE REALTY LLC, )  
14 Plaintiff, )  
15 v. )  
16 CARL ARNAL, *et al.*, )  
17 Defendants. )  
18 \_\_\_\_\_ )

19  
20 This action was tried to the court on January 18, 2007. This document sets out the  
21 court's findings of fact and conclusions of law.

22 **I. FINDINGS OF FACT**

23 1. This dispute involves two separate cases which were consolidated by court order.  
24 Both cases arise from an adjuster's authorization agreement dated February 17, 1999, between  
25 Carl Arnal ("Arnal") doing business as the Consortium of Public Adjusters and Newcastle  
26 Realty ("Newcastle"), in which Newcastle retained Arnal to adjust an insurance claim related to  
27 damages incurred at an apartment complex called "The Fountains" in Sun City, Arizona.

28 2. The adjuster's authorization agreement states in pertinent part that Newcastle  
agrees "to pay and hereby assign and direct payment to [Arnal], a fee equal to fifteen percent

1 (15%) of any monies received...when adjusted with the Insurance Companies, or otherwise  
2 recovered.”

3 3. This document was signed by Steven Swarzman, Newcastle’s representative, on  
4 February 17, 1999. Mr. Swarzman is an educated business man with the capacity to read and  
5 understand what he signs.

6 4. At that time, Newcastle had commercial property insurance coverage on “The  
7 Fountains” through Travelers Indemnity Company of Illinois (collectively with its affiliated  
8 companies named as defendants “Travelers”).

9 5. On March 22, 1999, Arnal sent Travelers a letter stating that “Public Adjusters  
10 Inc., holds a legal assignment of a portion of the proceeds arising out of [Newcastle’s] claim” in  
11 consideration for services rendered in the adjustment of the claim, and demanding Travelers “to  
12 include the name of Public Adjusters Inc., as payee on any and all drafts and/or checks issued in  
13 payment of this claim.”

14 6. Travelers then provided written acknowledgment, dated April 2, 1999, of its  
15 receipt of Arnal’s March 22, 1999 written Notice of Lien & Assignment.

16 7. On September 2, 1999, Travelers issued the first check in the amount of \$1,136.47,  
17 payable to “Newcastle Realty L.L.C. [sic] and Public Adjusters.”

18 8. On September 17, 1999, Newcastle signed and had Arnal submit a Proof of Loss  
19 which states that “Loss, if any, payable to Assured’s, Fleet Bank of New York, Public Adjusters,  
20 LLC [i.e., Arnal]” and further provides that those same parties had an interest or incumbrance on  
21 the property that was the subject of the loss.

22 9. On September 28, 1999, Travelers issued a second check in the amount of  
23 \$336.53, payable to “Newcastle Realty LLC & Public Adjusters LLC”.

24 10. On October 26, 1999, Travelers issued a third check in the amount of \$224,474.37,  
25 payable to “Newcastle Realty LLC and The Fountains and Fleet National Bank of New York  
26 and Public Adjusters LLC.”

27 11. Travelers sent all three of the above checks directly to Arnal’s business address.  
28

1           12. By letter dated January 25, 2000, Newcastle recognized the valuable contributions  
2 Arnal had made, but explained that “the offer by Travelers, be it the one million five hundred  
3 thousand dollars [Arnal] previously mentioned or the two million [Arnal] mentioned in  
4 yesterday’s letter is grossly insufficient to cover my past, present and future expenses.”

5           13. By letter dated February 29, 2000, Newcastle terminated the adjuster’s  
6 authorization agreement with Arnal. The letter stated that the adjustment of Newcastle’s claim  
7 had failed to yield enough money to sufficiently restore the damaged property and that  
8 Newcastle had decided to “go to court” to enforce the policy.

9           14. The letter did not purport to terminate a fee agreement. Rather, it specifically  
10 referenced the adjuster’s authorization agreement, which contains the assignment language.

11           15. The letter concluded by inquiring whether Arnal was willing to continue on the  
12 matter as a consultant; the reasonable inferences being that Newcastle believed Arnal’s services  
13 were valuable and wanted to continue to use his services. Newcastle simply did not want to pay  
14 Arnal the 15% assignment it was already committed to pay for his services.

15           16. The adjuster’s authorization, however, provided that Newcastle “may cancel this  
16 contract, without penalty or obligation, within three (3) business days from the above date  
17 [which was February 17, 1999].” Newcastle did not cancel the adjuster’s authorization within  
18 three business days of February 17, 1999.

19           17. In a letter to Travelers dated March 6, 2000, Arnal acknowledged that Newcastle  
20 had terminated his services as adjuster, but stated that “while we can be dismissed from services  
21 we have a valid lien and assignment, which Travelers acknowledged notice of when we  
22 commenced our adjusting on this file.”

23           18. In February 2000, Newcastle filed suit against Travelers, alleging claims for  
24 property damage, loss of rents, and insurance bad faith arising out of Travelers’ actions with  
25 respect to Newcastle’s insurance claim.

26           19. On August 15, 2002, Newcastle and Travelers entered into a settlement agreement  
27 and release, in which Travelers agreed to pay Newcastle \$2,250,000, and Newcastle agreed to  
28 dismiss its pending suit and release all claims against Travelers.

1           20.     In addition, Newcastle agreed to indemnify Travelers in the event Arnal made a  
2 claim or brought suit against Travelers “for payment of a purported lien allegedly arising from  
3 Arnal’s agreement to provide adjusting services to Newcastle.”

4           21.     Travelers also agreed not to tell Arnal that it paid Newcastle \$2.25 million in  
5 settlement.

6 **II.     CONCLUSIONS OF LAW**

7           1.     “An insured's partial assignment of insurance proceeds to an independent adjuster  
8 representing the insured has been held valid and enforceable.” *Berenter v. Gallinger*, 173 Ariz.  
9 75, 80, 839 P.2d 1120, 1125 (App. 1992) (citing *Home Insurance Co. v. Gigi Fashions, Inc.*, 267  
10 F. Supp. 958 (D.N.J. 1967).

11           2.     “[I]n order to effect a legal assignment of any kind there must be evidence of  
12 an intent to assign or transfer the whole or part of some specific thing, debt, or chose in  
13 action. . . .” *Certified Collectors, Inc. v. Lesnick*, 116 Ariz. 601, 603, 570 P.2d 769, 771 (1977).

14           3.     “A contract provision specifying [an assignment] is evidence of such an  
15 intent. . . .” *Britton v. Co-op Banking Group*, 4 F.3d 742, 746 (9<sup>th</sup> Cir. 1993).

16           4.     A court must, “if possible, interpret a contract in such a way as to reconcile and  
17 give meaning to all of its terms, if reconciliation can be accomplished by any reasonable  
18 interpretation.” *Gfeller v. Scottsdale Vista North Townhomes Ass’n*, 193 Ariz. 52, 969 P.2d 658  
19 (App. 1998).

20           5.     “If the meaning of a contract can be determined from the four corners of the  
21 document and cannot reasonably be construed in more than one sense, extraneous documents are  
22 irrelevant and the court must give effect to the language of the agreement. [citations omitted].  
23 The mere fact that the parties disagree as to the meaning of language contained in the agreement  
24 is not sufficient to create an ambiguity [citations omitted]. . . . Only when the meaning of the  
25 contract remains uncertain after application of the primary standards of interpretation . . . may  
26 the court apply the [secondary] rule of construction that ambiguity of language is to be construed  
27 against the drafter of the contract.” *United California Bank v. Prudential Ins. Co.*, 140 Ariz.  
28 238, 258, 681 P.2d 390, 410 (App. 1983). As such, this secondary rule of construction is

1 subordinate to the rule that the intent of the parties should govern. *Taylor v. State Farm Mut.*  
2 *Ins. Co.*, 175 Ariz. 148, 158 n. 9, 854 P.2d 1134, 1144, n.9 (1993).

3 6. Moreover, when a person with the capacity to read and understand an instrument  
4 signs that same instrument, absent fraud, he is bound by its contents and is estopped from saying  
5 that its provisions are contrary to his intentions or understanding. *Dobler v. Story*, 268 F.2d 274,  
6 277 (9<sup>th</sup> Cir. 1959).

7 7. This Court therefore concludes that, based on the facts and circumstances of this  
8 case, including the specific use of the term “assign” in the adjuster’s authorization signed by  
9 Mr. Swarzman, it was Newcastle’s intent to assign Mr. Arnal “(15%) of any monies received . . .  
10 when adjusted with the Insurance Companies , or otherwise recovered.”

11 8. [W]hen notice of an assignment is given to and received by the debtor, he then  
12 becomes liable to pay the assignee whether he accepts the assignment or not.” *Greene v. Reed*,  
13 15 Ariz. App. 110, 112, 486 P.2d 222, 224 (App. 1971).

14 9. “After notice of [an] assignment has been given to the obligor . . . the assignor has  
15 no remaining power of release. The obligor must pay the assignee.” *Wood v. Chicago Title*  
16 *Agency*, 109 Nev. 70, 72, 847 P.2d 738, 730-40 (1993).

17 10. “Once a valid assignment has been made, the assignor cannot cancel or modify the  
18 completed assignment by an [sic] unilateral action without the consent of the assignee.” *Id.*

19 11. The assignment in this case is not one for purposes of collection and thus is  
20 irrevocable. The assignment did not transfer legal title to the claim so the assignee could sue in  
21 his or her own name.” *See De Benedictis v. Hagen*, 77 Wash.App. 284, 290, 890 P.2d 529, 532  
22 (1995).

23 12. [An] obligor is liable to the assignee if the funds assigned are subsequently paid to  
24 the assignor in violation of the assignment. Similarly, an obligor who disregards [a valid]  
25 assignment and makes payment elsewhere remains liable to the assignee.” *Wood*, 109 Nev. at  
26 73, 847 P.2d at 740.

27 13. The Travelers Defendants are therefore liable to Mr. Arnal for \$337,500, plus pre-  
28

1 judgment interest accruing at 10% per annum since August 15, 2002, the date Travelers settled  
2 with Newcastle for \$2.25 million and agreed not to pay Mr. Arnal his assigned interest.

3 14. By February 5, 2007, counsel for Arnal shall submit a proposed form of  
4 Judgment and an Application for Attorneys' Fees and a Statement of Taxable Costs.

5 DATED at Phoenix, Arizona, this 19<sup>th</sup> day of January 2007.

6  
7 /s/ JOHN W. SEDWICK  
8 UNITED STATES DISTRICT JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28