

4/18/80

This is in reply to your letter of January 28, 1980, and recent telephone conversation with a member of my staff, concerning the exempt status of fee adjusters employed by your company under section 13(a)(1) of the Fair Labor Standards Act.

Section 13(a)(1) of the Act provides a complete minimum wage and overtime pay exemption for any employee employed in bona fide executive, administrative, or professional capacity, or in the capacity of outside salesperson. The requirements for exemption are contained in Regulations, Part 541, a copy of which is enclosed. An employee will qualify for exemption, if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate section of the regulations, are met.

You state that the employees in question are responsible for the profit and loss of the location where they are employed, they develop new business from present customers and solicit new accounts, they adjust and appraise material damage claims to automobiles, motorcycles, recreational vehicles, farm equipment, and mobile homes, they negotiate contract prices on the repair, replacement and disposal of damaged property, and negotiate and execute indemnification settlements with claimants. The salaries of the fee adjusters range from \$915 to \$1,590 per month, plus commissions. You also state that there is no limit on the dollar amount of claims the employees can adjust, and that they have very limited contact with their supervisor.

Based on the information submitted, it is our opinion that the fee adjusters would qualify for exemption as bona fide administrative employees under section 541.214 of the regulations. That section of the regulations includes within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of the employer

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or the employer's customers, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. The negotiation and execution of indemnification settlements with claimants is one type of work that requires the requisite use of discretion and independent judgment. However, please note that it appears that some of the fee adjusters may not be receiving a salary of at least \$250 per week, and as such, would not qualify for exemption. Also, your attention is directed to section 541.206 of the regulations concerning the "primary duty" test, and section 541.118 discussing "salary basis" of payment.

If you have any further questions on this matter, or on any other provision of the Fair Labor Standards Act, you may find it more convenient to get in touch with our Area Office in Baltimore at the Federal Office Building, Room 913, 31 Hopkins Plaza, Charles Center (zip code: 21201) (telephone: 962-2265). That office will be pleased to offer every possible assistance.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator

Enclosures