

Frequently Asked Questions regarding the Application of Section 612.13 (1m), Wis. Stat., related to Inside Directors

Since the issuance of the Bulletin dated January 13, 2005, OCI has received additional questions regarding the application of s. 612.13 (1m), Wis. Stat. The following questions and OCI responses are intended to facilitate compliance with s. 612.13 (1m), Wis. Stat. Individual company circumstances will ultimately determine the proper classification of directors under s. 612.13 (1m).

Question 1 - The January 13, 2005, Bulletin says that “representatives” of the company includes “insurance marketing intermediaries” as defined in s. 628.02 (1), Wis. Stat. Does it make a difference if the representative holds an OCI agent license or is an “exempt” town mutual agent under s. 628.05, Wis. Stat.?

Answer - No. Both licensed insurance agents and town mutual agents who do not hold an agent license would be considered “representatives” of the company. The key point is that the person is a “representative” if their work includes soliciting, negotiating, or placing insurance on behalf of the policyholder, or advises about insurance needs and coverages.

Question 2 - Our company has an employee whose job is to perform inspections and adjusting claims. If that employee is out sick or on vacation, and a director performs those duties for a limited time period, does that director become an “inside director” because they helped to cover the employee’s absence?

Answer - No, however we look at the inspection and adjustment duties somewhat differently. If the director is not otherwise an “inside director” (i.e., an agent or employee of the company), and if the director performs inspections or any other company function on a temporary basis while the regular employee is on sick leave or on vacation, the director would not become an “inside director” solely because of temporary work performed for the company.

Directors have a statutory duty to “...adjust or supervise the adjustment of losses...” pursuant to s. 612.13 (4), Wis. Stat. Consequently, directors can and should be involved in the adjusting process on more than a temporary basis as part of their director duties.

Question 3 - One director inspects all new policies written and a large portion of the renewal policies that are inspected by the company; the director is paid for this work as part of director fees, not as salary or wages, and earns less than \$5,000 per year. Does performing this work make the director an “inside director”?

Answer - Yes. OCI views inspections and underwriting as key home office duties, and a person who substantially performs the inspecting and underwriting is acting as an employee of the company, so the person would be an “inside director.” If the director only performs inspections on a temporary basis because the regular employee was sick or on vacation, then FAQ #2 would apply. If a director only reviewed the inspections performed by other company employees, acting in the role as a member of an Underwriting and Inspections Committee, then the director would be performing director-level duties and would not be acting as an employee in this case. The earnings threshold of \$5,000 per year establishes a level above which there is a presumption that the activities the director is compensated for go beyond the typical duties of a Town Mutual director. Again, individual company circumstances will ultimately determine the proper classification of directors under s. 612.13 (1m), Wis. Stat.