

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

CASE NO. 2011-CA-842

EAST COAST PUBLIC ADJUSTERS,
INC., a Florida corporation,
PREMIER PUBLIC ADJUSTING, INC.,
a Florida corporation,

Plaintiffs,

v.

JEFF ATWATER in his capacity as
CHIEF FINANCIAL OFFICER OF THE
STATE, and the FLORIDA
DEPARTMENT OF FINANCIAL
SERVICES.

Defendants.

AMENDED COMPLAINT

Plaintiffs East Coast Public Adjusters, Inc. ("East Coast") and Premier Public Adjusting, Inc. ("Premier") (collectively "Plaintiffs"), sue the defendants Jeff Atwater in his capacity as Chief Financial Officer of the State of Florida, the Florida Department of Financial Services, and the State of Florida for declaratory and injunctive relief to declare invalid subsection 626.854(11)(b)2, Florida Statutes



(2008), and subsection 627.351(6)(a)(6), Florida Statutes (2011), and to prevent Defendants from taking any action against Plaintiffs pursuant to these provisions.¹

JURISDICTION, PARTIES & VENUE

1. Jurisdiction. This is an action for declaratory and injunctive relief. The court has jurisdiction pursuant to section 86.011, Florida Statutes.

2. Plaintiffs: Plaintiffs are public adjusting companies which employ licensed public adjusters to assess damage to property for insured property owners, prepare estimates of such damage, submit claims to insurance companies for insureds, and represent insured property owners in the negotiation and settlement of insurance claims for property damage.

a. East Coast Public Adjusters, Inc. (“East Coast”) is a corporation existing under the laws of the State of Florida, and a “public adjuster” as defined in section 627.854(1). East Coast has its principal place of business in Miami-Dade County. East Coast has been in business for 24 years, and employs approximately 14 licensed public adjusters.

b. Premier Public Adjusting, Inc. (“Premier”) is a corporation existing under the laws of the State of Florida, and a “public adjuster” as defined in

¹ Except as otherwise designated, all references to statutes in this Complaint will be made to statutory subsections without restating “Florida Statutes” or the applicable year of enactment.

section 626.854(1). Premier has its principal place of business in Miami-Dade County. Premier has been in business for 9 years, and employs approximately 3 licensed public adjusters.

3. Defendants. The Chief Financial Officer and the Department of Financial Services (collectively “the Department”) are charged with the regulation of insurance adjusters, and the enforcement of state laws governing insurance adjusters, pursuant to section 626.016(1).

a. Jeff Atwater is the Chief Financial Officer of the state as defined in section 17.001, and the head of the Department of Financial Services pursuant to section 20.121(1).

c. The Department of Financial Services is the agency of the state charged with the administration of the state’s insurance laws pursuant to sections 624.01, 624.05, and 624.307(1).

4. Venue. Venue is proper in this court because the defendants and all of the actions giving rise to this cause of actions occurred in Leon County, Florida.

GENERAL ALLEGATIONS

5. *Public Adjusters.* Following an event which causes damage to property, property owners are often unfamiliar with the intricacies of their insurance policies, the process for filing timely claims, and the procedures employed by their insurance companies for assessing a loss, and are ill-equipped to

deal effectively with adjusters employed or hired by their insurers. State licensed public adjusters provide a valuable public service to property owners by helping them assess their losses, file claims with their insurers, and represent their interests in securing full and fair compensation for their losses.

6. *Regulation of Public Adjusters.* Public adjusters are regulated by Chapter 626, Florida Statutes, entitled “Insurance Field Representatives and Operations.” Public adjuster” is defined in section 626.854(1) as:

any person, except a duly licensed attorney at law . . . who, for money, commission, or any other thing of value, prepares, completes, or files an insurance claim form for an insured or third-party claimant, or who, for money commission or any other thing of value, acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as a an adjuster of such claims, and also includes any person who, for money, commission, or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

7. *Civil and Criminal Penalties.* Florida law governing public insurance adjusters includes a wide array of consumer protections as well as civil and criminal penalties for public insurance adjusters who violate those laws. The statutes and administrative regulations governing Florida public insurance adjusters protect the public in the following ways:

- a. Public insurance adjusters must hold permanent licenses to practice within the state;

- b. Unlike some states, Florida does not issue emergency licenses to public insurance adjusters;
- c. A licensed public insurance adjuster must pass a written examination, post a \$50,000 surety bond, and complete 24 hours of biennial continuing education;
- d. Public insurance adjusters may not act as contractors with their clients, or have financial interests in contracting or salvaging firms that do business with those clients;
- e. All insurance adjusters are subject to a state code of ethics that bars negotiating with claimants or witnesses who are suffering from shock, serious mental or emotional distress, or trauma associated with their loss;
- f. Public-adjuster contracts must conform to state requirements, must include anti-fraud provisions, and are subject to unfair and deceptive trade practices laws;
- g. Public insurance adjusters are prohibited from giving loans or financial advances to clients or prospective clients, and from giving merchandise worth more than \$25 as an advertisement or inducement to contract; and
- h. Contracting with a public insurance adjuster does not remove a claimant's right to participate in the adjustment of his or her claim.

Licensed public adjusters are subject to fines and penalties for failing to abide by the requirements of Chapter 626, pursuant to sections 626.601, 626.681, and 626.8698, and their licenses are subject to revocation, suspension, or termination pursuant to sections 626.611 and 626.621.

8. *Administrative Regulations.* Florida public insurance adjusters also are governed by administrative regulations promulgated by DFS. The administrative regulations include a code of ethics which requires, in part, that all insurance adjusters place the interests of claimants above their own, treat all claimants fairly, and refrain from attempting to negotiate or obtain a statement from any claimant who is or would reasonably be expected to be in shock or serious mental distress arising out of or resulting from a loss. DFS has statutory authority to deal with unethical conduct or fraudulent behavior by public adjusters.

9. *Disciplinary Actions Against Public Adjusters.* There has not been any significant number of actions against public adjusters. Indeed, the vast majority of disciplinary actions taken by DFS against licensed public insurance adjusters over the past five fiscal years have been for administrative and technical violations, such as failure to timely post a bond.

THE RECENT HISTORY OF PUBLIC ADJUSTER REGULATION

10. *The 2007 Task Force Recommendation.* In 2007, the Florida Legislature created a Task Force on Citizens Property Insurance Claims Handling and Resolution (“the Task Force”) to “make recommendations to the legislature and executive branch relating to the appropriate handling, service and resolution of the open 2004-05 hurricane claims of Citizens Property Insurance Corporation.” See House of Representatives Staff Analysis of 2008 CS/CS/House Bill 661, dated April 21, 2008 (“Staff Analysis”) at 1, a copy of which is attached as Exhibit 1.

Through its review of claims against Citizens Property Insurance Corporation, the Task Force “became aware of the impact that public adjusters have on the claims process.” *Id.* The Task Force found that “the current laws do not adequately protect consumers from unscrupulous public adjusters,” some of whom are “not properly trained or qualified,” and who “charge exorbitant fees which oftentimes were not apparent to insured because such fees were not prominently displayed in the public adjuster contract.” *Id.*

To combat these perceived problems, the Task Force proposed a number of changes to the laws governing public adjusters. *Id.*

11. *The 2008 legislative amendments to public adjuster law.* In 2008, the Legislature adopted amendments to the law governing public adjusters, including a provision restricting public adjusters from contact with policyholders for 48 hours. See 626.854(6), Fla. Stat. (2008).

Subsection 626.854(6) has since been found to be an unconstitutional restriction on commercial speech. *See Atwater v. Kortum*, No. SC11-133, 2012 WL 2579677 (Fla. July 5, 2012).

Subsection 626.854(11)(b) was also amended to read:

A public adjuster *may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value in excess of:*

1. *Ten percent* of the amount of insurance claim payments by the insurer for claims based on events that are the subject of declaration of a state of emergency by the Governor. This provision applies to claims made during the period of 1 year after the declaration of emergency.
2. *Twenty percent* of the amount of all other insurance claim payments.

(emphasis added).

12. *A fee cap of 10% is unreasonably low particularly when relatively small claims are involved.* The 10% fee cap was imposed without any factual basis or consideration of its impact on public adjusters and policyholders. Particularly with respect to small claims, there may not be an incentive for public adjusters to provide the service that may be even more important to the policyholders who suffer the loss.

13. *A fee cap of 10% during the declared "state of emergency" period is not rationally related to a legitimate state interest.* There is no difference between work done by a public adjuster *during* the one year period after a state of emergency is declared, and the work done by a public adjuster *after* the one year

period has expired. Therefore there is no rational basis for making the increased 10% fee cap dependent on the declaration of a state of emergency.

14. *The statute is overboard because the fee cap is triggered by the Governor's subjective power to declare a "state of emergency."* The Governor's power to declare a state of emergency under Section 252.36, Fla. Stat. is devoid of any standards or guidelines, and is entirely subjective. Section 252.36, in relevant part, states as follows:

A state of emergency shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent.

Section 252.34 (3), Fla. Stat. defines "emergency" to mean:

any occurrence, of threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

The definition of "emergency" has no connection with incidents of property damage, and allows a state wide declaration to impose a fee cap when only a small portion of the state is impacted. Because the entire measure is so broad, and the Governor's power to declare a state of emergency so subjective, the fact that the statutory fee cap is contingent on such a declaration by the Governor renders the statute unconstitutionally overbroad on its face. Moreover, the fact that the legislative fee cap is triggered by a Governor-declared state of emergency,

amounts to an improper delegation of legislative power to the executive branch in violation of Article II, Section 3, Constitution of Florida.

For example, the statutory fee cap on public adjusters can be triggered by events having absolutely nothing to do with property loss--such as acts of terrorism, or health code violations. And even when property loss is involved, a state of emergency may be declared across the whole state due to an event--such as a hurricane or tornado--that only impacts a portion of the state.

15. *The Commissioner of the Office of Insurance Regulation's Power to Modify or Suspend a Governor-Declared State of Emergency.* Pursuant to Section 252.63, the Commissioner of the Office of Insurance Regulation ("OIR") has the power to modify or suspend a Governor declared state of emergency:

(1) When the Governor declares a state of emergency pursuant to s. 252.36, **the commissioner may issue one or more general orders applicable to all insurance companies, entities, and persons, as defined in s. 624.04, that are subject to the Florida Insurance Code and that serve any portion of the area of the stat under the state of emergency.**

(2) An order issued by the commissioner under this section becomes effective upon issuance and continues for 120 days unless terminated sooner by the commissioner. The commissioner may extend an order for one additional period of 120 days if he or she determines that the emergency conditions that gave rise to the initial order still exist. By concurrent resolution, the Legislature may terminate any order issued under this section.

(3) The commissioner shall publish in the next available publication of the Florida Administrative Weekly a copy of the text of any order issued under this section, together with a statement

describing the modification or suspension and explaining how the modification or suspension will facilitate recovery from the emergency.

(emphasis added). The Legislature has given no guidance or standards for the exercise of this power and it is an unconstitutional delegation of power under Article II, Section 3, Constitution of Florida.

Since Section 626.854(11)(b)'s enactment, no OIR Commissioner has ever issued an order modifying or suspending the fee cap applicable to public adjusters during a governor-declared state of emergency.

Once again, however, the very fact that the legislative fee cap can be modified or suspended by the actions of an executive official, confirms that the statutory fee cap amounts to an improper delegation of legislative power to the executive branch.

The Citizens Property Insurance Corporation Statute

16. *Citizens Property Insurance Corporation.* The State of Florida has elected to enter the private insurance market with its organization of Citizens Property Insurance Corporation ("Citizens") that provides insurance to Florida property owners.

17. *Legislative study of Citizens and Public Adjusters demonstrated that public adjusters obtain better results for policyholders.* In January 2010, the Florida Office of Program Policy Analysis & Government Accountability

("OPPAGA") published its report that had been conducted pursuant to legislative mandate, Chapter 2009-87, Laws of Florida. This report, attached to this complaint as Exhibit 2, was titled: "Public Adjuster Representation in Citizens Property Insurance Corporation Claims Extends the Time to Reach a Settlement and Also Increases Payments to Citizens' Policyholders."

On page 7 of that report, OPPAGA concluded:

Policyholders with public adjuster representation typically received higher settlements than those without public adjusters.

Policyholders that filed catastrophe claims in 2008 and 2009 generally received larger insurance settlements than policyholders that did not hire these persons. The typical payment to a policyholder represented by a public adjuster was \$22,266 for claims filed in 2008 and 2009 related to the 2004 hurricanes (see Exhibit 6). In contrast, policyholders who did not use a public adjuster received typical payments of \$18,659. The difference in payments was larger for claims related to 2005 hurricanes, with public adjuster claims resulting in payments that were 747% higher. However, as policyholders pay public adjuster fees as a percentage of their settlement, their net settlement would be lower than this amount.

OPPAGA report, page 7 (bold in original, italics emphasis added).

OPPAGA's reported increases in settlements by Citizens policyholders who used public adjusters were such that, even after subtracting the maximum public-adjuster fee allowed by statute, policyholders still received higher net recoveries. Moreover, the OPPAGA report concluded that Florida laws governing public insurance adjusters are comparable to and sometimes more restrictive than laws of other states.

18. *2011 Legislation relating to claims against Citizens.* After receiving the OPPAGA report, and with knowledge that Citizens policyholders greatly benefitted from the services of public adjusters, the 2011 Florida legislature passed yet another law limiting public adjusters' compensation, this time to protect the proprietary function that the state had entered by establishing Citizens. Section 627.351(6)(a)(6) imposes a limitation on the fees public adjusters may charge on claims filed by Citizens Property Insurance Corporation ("Citizens") policyholders:

For any claim filed under any policy of the corporation, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value greater than 10 percent of the additional amount actually paid over the amount that was originally offered by the corporation of any one claim.

(Emphasis added.)

19. *The Department has not been able to give guidance as to the meaning of the statute.* Ironically, the very agency charged with enforcing subsection 627.351(6)(a)(6)—the Florida Department of Financial Services ("DFS")—has admitted that it is unsure how the statute is to be construed. On September 27, 2011, Representative Frank Artiles wrote an email to the DFS requesting its position as to what the term "original offer" means, and whether 627.351(6)(a)(6) should be interpreted to apply to only supplemental claims. See Exhibit 3, email exchange between Representative Artiles and counsel for the DFS.

20. *DFS has delegated to Citizens the interpretation of the fee limitation.* Unable to articulate the DFS' definition of the term "original offer", the DFS official instead informed Mr. Artiles that Citizens—the very corporation standing to benefit from the legislation—is also charged with *interpreting* the intent of congress when enacting 626.351(6)(a)(6). Thus, the response from DFS—that the term "original offer" means whatever Citizens says it means—is nothing short of an admission that the statute is both vague and ambiguous on its face. This delegation to the corporation is itself contrary to principles of the Constitution of Florida, Article II, Section 3.

COUNT I

SUBSECTION 626.854(11)(B) VIOLATES PLAINTIFFS' RIGHTS UNDER THE FLORIDA CONSTITUTION

21. *Incorporation.* The allegations of paragraphs 1 through 20 are incorporated in this count by reference and re-alleged.

22. *Dispute over interpretation and validity of statutes.* A bona fide and actual dispute exists between Plaintiffs, on the one hand, and the Department and the State on the other hand, with respect to the validity of the subsection 626.854(11)(b). This dispute between the parties is appropriate for declaratory and injunctive relief.

23. *No remedy at law.* Plaintiffs do not have an adequate remedy at law, and will be irreparably harmed by the Department and the State if declaratory and injunctive relief is not provided.

24. *Fee caps are placed on public adjusters but not other professionals and service providers.* There are many service providers who are similarly situated with the public adjusters—roofers, mitigation experts, contractors--yet the Legislature has placed no fee caps on the other service providers. Similarly, attorneys who can legally provide the same services to policyholders are not regulated by the fee cap.

25. *Unconstitutionality of statute.* Subsection 626.854(11)(b) is unconstitutional on its face, and as applied to plaintiffs for the following reasons:

- a. The statute deprives the plaintiff public adjusters of their right to be rewarded for their industry in violation of the inalienable right guaranteed by Article I, Section 2, Constitution of Florida.
- b. The statute deprives the plaintiff public adjusters of their right to Equal Protection in violation of the inalienable right guaranteed by Article I, Section 2, Constitution of Florida.
- c. The statute restricts the fee of public adjusters based on the declaration of a state of emergency by the Governor but such declarations do not impact only emergencies that have implications for property loss,

therefore the statute is overly broad and violates the plaintiffs' rights to due process in violation of Article I, Section 9. Constitution of Florida.

d. The statute restricts the fee of public adjusters based on the declaration of a state of emergency by the Governor but such declarations are not necessarily based on events that have state-wide impact, therefore the statute is overly broad and violates the plaintiffs' rights to due process in violation of Article I, Section 9. Constitution of Florida.

e. The fee restriction is based on the delegated authority of the Governor to declare a state of an emergency pursuant to Section 252.36. Because Section 252.36 provides no guidance or standards for the Governor's decision to make such a declaration, section 626.854(11)(b) amounts to an improper delegation of legislative authority to the executive branch in violation of Article II, Section 3. Constitution of Florida.

f. The statute denies the public adjuster plaintiffs their inalienable right to acquire, possess and protect property, in violation of Article I, Section 2, Constitution of Florida.

g. Subsection 626.854(11)(b)2 imposes an arbitrary, irrational, and oppressive limitation on fees that can be charged for Plaintiffs' services as public adjusters, and denies Plaintiffs the right to contract freely with members of the public.

WHEREFORE, Plaintiffs request:

- a. A declaratory judgment that subsection 626.854(11)(b) is unconstitutional;
- b. A temporary and a permanent injunction preventing the Department and the State from taking any action against Plaintiffs pursuant to 626.854(11)(b)2; and
- c. The costs of bringing this proceeding, and such other relief as is just and proper.

COUNT II

SUBSECTION 627.351(6)(a)(6) IS UNCONSTITUTIONAL

26. *Incorporation.* The allegations of paragraphs 1 through 20 are incorporated in this count by reference and re-alleged.

27. *Dispute relating to validity of Section 627.351(6)(a)(6).* A bona fide and actual dispute exists between Plaintiffs, on the one hand, and the Department and the State on the other hand, with respect to the validity of the subsection 627.351(6)(a)(6). Plaintiffs do not have an adequate remedy at law, and will be irreparably harmed by the Department and the State if declaratory and injunctive relief is not provided.

28. *The legislation is vague.* It is also unclear if the statutory fee restriction applies to all Citizens claims, only to supplemental and reopened claims,

or only original claims. Moreover, if the restriction is, in fact, intended to cover supplemental and reopened claims, it is unclear how the fee restriction is to be applied. For example, in the case of a supplement claim, an “original offer” can be construed to mean either (i) the amount offered by the insurance company in response to the initial claim filed by the insured to which the supplemental claim relates, or (ii) the amount originally offered by the insurance company in response to the supplemental claim itself.

29. *Public Adjuster cannot determine how to apply the law.* Therefore, it is impossible for a public adjuster to discern exactly when an original offer occurs for purposes of calculating the 10 percent fee limitation required by the statute. It is unclear, for example, whether a reservation of rights letter, an oral admission of liability by a field adjuster, a settlement negotiation in mediation, a written offer from a company adjuster, an estimate prepared by an engineer, a denial of coverage letter, or any of the other communications that occur between Citizens and Florida policyholders during the prosecution of a claim would constitute an “original offer” under the statute.

30. *Public adjusters working on non-Citizens claims are not subject to the fee cap.* Because the statute only applies to Citizens policyholders, public adjusters who represent non-Citizens policyholders are permitted to receive a contingency fee of up to 20 percent, while public adjusters working for Citizens

policyholders are limited to compensation not greater than 10 percent of the difference between the amount “originally offered” and the amount actually recovered. This disparate treatment amounts to a violation of public adjusters’ right to equal protection under the Florida constitution.

31. *Other professionals and service providers do not have fee caps.* The 10 % fee cap placed on public adjusters who work on Citizens’ claims are not applied to other service providers such as roofers, contractors, mitigation specialists, etc. Nor or the fee caps placed on attorneys who can legally provide the same services.

32. *The special legislation relating to fees charged on Citizens claims is unconstitutional.* The special Citizens provision is unconstitutional for the following reasons:

- a. It infringes on the public adjusters inalienable right to be rewarded for industry in violation of Article I, Section 2, Constitution of Florida;
- b. It infringes on public adjusters’ right to contract;
- c. It places an unreasonable restriction on the fee a public adjuster may charge and constitutes a deprivation of the right of Equal Protection since there are no similar fee limitations on other service providers (roofers, contractors, etc), **nor on** other professionals legally able to perform the same service (lawyers), or public adjusters working on non-Citizens claims;

d. Because the statute does not define “original offer”, it is impossible to calculate when the 10 percent fee limitation is triggered. It is unconstitutionally vague and ambiguous on its face. It is unclear whether a reservation of rights letter, an oral admission of liability by a field adjuster, a settlement negotiation in mediation, a written offer from a company adjuster, an estimate prepared by an engineer, or any of the various communications that occur between Citizens and the policyholder during the prosecution of a claim would constitute an “original offer.”

e. The statute is an attempt by the Legislature to favor a proprietary function of government and sovereign immunity does not apply in such circumstances.

f. The restriction on fees does not apply to others who render services to Citizens policyholders and it is therefore an imposition on the principle of Equal Protection provided in Article I, Section 2, Constitution of Florida.

g. Subsection 627.351(6)(a)(6) does not advance a significant governmental interest.

h. Subsection 627.351(6)(a)(6) is more restrictive than necessary to serve any legitimate public purpose, and is not narrowly tailored to further a significant government interest. Other less intrusive means are available to control or prevent any abuse of the public by public adjusters.

- i. Subsection 627.351(6)(a)(6) denies Plaintiffs due process of law under Article I, Sections 2 and 9 of the Florida Constitution.
- j. By limiting the fees public adjusters who are retained by Citizens policyholders may charge for their services, subsection 627.351(6)(a)(6) impermissibly impairs Plaintiffs' right to contract and right to be rewarded for industry.
- k. Subsection 627.351(6)(a)(6) does not protect the public health, safety, or welfare, and does not fulfill a necessary governmental purposes.
- l. Subsection 627.351(6)(a)(6) imposes an arbitrary, irrational, and oppressive limitation on fees that can be charged for Plaintiffs' services as public adjusters to Citizens policyholders, and denies Plaintiffs the right to contract freely with members of the public.
- m. Section 627.351(6)(a)(6) is unconstitutionally vague and ambiguous because it is unclear exactly how, when and under what circumstances the 10 percent fee cap is to be applied to public adjusters representing Citizens policyholders.
- n. Specifically, section 627.351(6)(a)(6) provides that a public adjuster may not charge more than "10 percent of the additional amount actually paid over the amount that was *originally offered* by the corporation for any one

claim.” (emphasis added). However, the term “original offer” is not defined anywhere in the insurance code.

o. There is no basis for treating claims against Citizens in a different manner than claims against other insurance companies.

33. *Law discourages public adjusters from handling claims by Citizen policyholders.* The fee restriction and the ambiguities inherent in the statute have the consequence of discouraging public adjusters from entering into contracts with Citizens policyholders where there is the threat of breaking an unconstitutionally vague law and because the fee is insufficient to allow profit from industry (particularly when small claims are involved).

WHEREFORE, Plaintiffs request:

- a. A declaratory judgment that subsection 627.351(6)(a)(6) is unconstitutional;
- b. A temporary and a permanent injunction preventing the Department and the State from taking any further action against Plaintiffs pursuant to 627.351(6)(a)(6); and
- c. The costs of bringing this proceeding, and such other relief as is just and proper.

Dated: this 4th day of December, 2012.

Respectfully submitted,

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 661 Insurance Adjusters
SPONSOR(S): Policy & Budget Council; Jobs & Entrepreneurship Council; Robaina and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1098

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Jobs & Entrepreneurship Council	15 Y, 0 N, As CS	Callaway/Topp	Thorn
2) Policy & Budget Council	20 Y, 0 N, As CS	Martin	Hansen
3)			
4)			
5)			

SUMMARY ANALYSIS

The law, in s. 626.854, F.S., defines a public adjuster as any person, except a licensed attorney, who prepares or files an insurance claim for an insured or third-party claimant. Similarly, the law recognizes that a public adjuster represents an insured or third-party claimant in negotiations with the policyholder's insurance provider with the goal of settling a claim. A public adjuster is hired and paid by the insured to act on his or her behalf. The public adjuster fee is usually a percentage of the claim payment that the public adjuster is responsible for recovering. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies and do not charge policyholders a fee.

During the 2007A Special Session, the Legislature enacted House Bill 1A which created and directed the Task Force on Citizens Property Insurance Claims Handling and Resolution (Task Force) to make recommendations to the legislative and executive branches relating to the appropriate handling, service and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens). During review of Citizens hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the current laws do not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, these adjusters charged exorbitant fees which oftentimes were not apparent to insureds because such fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters. In an effort to remedy concerns expressed about abuses by some public adjusters, the Task Force proposed this legislation.

The bill makes numerous changes to the law governing public adjusters. The changes relate to public adjusters fees, public adjuster solicitation and business practices, public adjuster licensure, continuing education requirements for public adjusters, and requirements for public adjuster contracts. The bill also establishes a public adjuster apprenticeship program and license.

The Department of Financial Services estimates there will be a positive, recurring impact on the Insurance Regulatory Trust Fund of \$38,500. The department also estimates that there will be a negative, non-recurring impact on the Insurance Regulatory Trust Fund of \$129,770 for the cost to upgrade the department's computer systems and of \$31,000 for the cost to develop unique public adjuster examinations, but these costs can be absorbed with existing resources.

The bill is effective October 1, 2008, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.
 STORAGE NAME: h0801c:PBC.doc
 DATE: 4/21/2008



FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill provides for more regulation of public adjusters by the Department of Financial Services (DFS or Department) and establishes a public adjuster apprentice license overseen by the Department.

Ensure lower taxes: The bill provides licensing fees for public adjuster apprentices.

Safeguard individual liberty: The bill provides for more regulation of public adjusters by the Department and establishes a public adjuster apprentice license overseen by the Department.

Promote personal responsibility: The bill provides for more regulation of public adjusters by the Department and establishes a public adjuster apprentice license overseen by the Department.

B. EFFECT OF PROPOSED CHANGES:

Public Adjusters

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. The law recognizes various types of adjusters, including public adjusters, independent adjusters, company employee adjusters, and catastrophe or emergency adjusters. Adjusters can be further classified as resident or nonresident. Resident adjusters are those who reside in Florida and are licensed in Florida, whereas, nonresident adjusters reside outside of Florida and are licensed by their home state.

The law assigns the Department of Financial Services to regulate resident and nonresident adjusters of all types; the DFS reports that in January 2008, Florida licensed more than 33,000 resident adjusters and over 35,000 non-resident adjusters.¹ DFS officials state that the number of licensed public adjusters has dramatically increased since the hurricanes of 2004-2005. In 2004, there were approximately 723 Florida resident licensed public adjusters and in 2008, there are 2,414 resident licensed public adjusters.²

The law, in s. 626.854, F.S., defines a public adjuster as any person, except a licensed attorney, who prepares or files an insurance claim for an insured or third-party claimant. Similarly, the law recognizes that a public adjuster represents an insured or third-party claimant in negotiations with the policyholder's insurance provider with the goal of settling a claim. A public adjuster is hired and paid by the insured to act on his or her behalf. The public adjuster fee is usually a percentage of the claim payment that the public adjuster is responsible for recovering. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies and do not charge policyholders a fee. Public adjusters must present a \$50,000 bond to DFS in order to be licensed. No bond is required of company employee or independent adjusters.

After the hurricanes in 2004 and 2005, Chief Financial Officer Tom Gallagher issued emergency rules relating to public adjusters. These rules banned public adjusters from requiring cash up front to adjust hurricane claims, limited public adjuster fees to 10 percent of the claim amount, gave homeowners up

¹ Information received from the Department of Financial Services on March 3, 2008 on file with the Committee on Insurance.

² There are 395 licensed non-resident public adjusters. According to DFS, there are 14,948 licensed resident independent adjusters (9,494 licensed non-resident independent adjusters); 15,756 licensed resident company employee adjusters (25,045 licensed non-resident company employee adjusters).

to 14 days to back out of a public adjuster contract without penalty, and prohibited public adjusters from demanding or accepting any type of compensation prior to the claim settlement.

On September 3, 2006, a new administrative rule³ regarding public adjusters went into effect. When the governor declares a state of emergency, the rule prohibits a public adjuster from demanding or accepting any type of compensation prior to the settlement of the claim, limits the public adjuster fee to 10 percent of the settlement amount or claim payment, and prohibits a public adjuster from contracting with any person to help the homeowner on the claim in return for a fee in excess of the 10 percent limitation.

There are also administrative rules relating to public adjusters that are in effect at all times.⁴ These rules, in part, address public adjuster contract cancellation, a public adjuster's actions relating to business referrals and actions relating to engagement of services of other professionals to help with the claim. Public adjusters must also abide by the general ethical rules applicable to all types of adjusters.

Task Force on Citizens Property Insurance Claims Handling and Resolution

During the 2007 Special Session, the Legislature enacted House Bill 1A which created and directed the Task Force on Citizens Property Insurance Claims Handling and Resolution (Task Force) to make recommendations to the legislative and executive branches relating to the appropriate handling, service and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens).⁵

During review of Citizens hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. For example, representatives with Citizens testified that of their 3,300 open claims which were in mediation or appraisal,⁶ at least ninety percent of the insureds were represented by public adjusters. The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the current laws do not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, these adjusters charged exorbitant fees which oftentimes were not apparent to insureds because such fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters. In an effort to remedy concerns expressed about abuses by some public adjusters, the Task Force has proposed this legislation.

Proposed Changes

The bill makes numerous changes to the law governing public adjusters. The bill's changes relating to public adjusters fees are as follows:

- Prohibits charging more than:
20% on non-hurricane claims
10% on hurricane claims⁷
- Prohibits basing a fee for work on a supplemental claim on the amount paid to the policyholder on the previous claim.

The current administrative rule allows public adjusters to solicit business and does not place any restriction on the solicitation. The bill makes numerous changes relating to public adjuster

³ 69B-220.201(5), F.A.C.

⁴ 69B-220.201(4), F.A.C.

⁵ The Task Force is composed of seven members, four of whom are appointed by the Governor, Chief Financial Officer, President of the Senate and Speaker of the House of Representatives. The rest of the members are the Commissioner of Insurance Regulation, or designee; Insurance Consumer Advocate, or designee; and Executive Director of Citizens Property Insurance Corp., or designee. The Task Force has held eight meetings, two public hearings and one informal workshop.

⁶ As of June 18, 2007.

⁷ Similar to Rule 69B-220.201(5)(b), F.A.C.

solicitation and business practices in residential property and condominium association insurance claims as follows:

- Prohibits soliciting directly or indirectly between the hours of 8:00 pm and 8:00 am Monday through Saturday and all day on Sunday.
- Prohibits soliciting or entering into a contract until at least 48 hours after occurrence of the loss, unless contracted by the policyholder.
- Prohibits giving or offering to give a monetary loan or advance to a client or prospective client.
- Prohibits giving or offering to give anything with a value in excess of \$25 for advertising or as an inducement to enter into a contract with a public adjuster.
- Allows the policyholder to cancel a public adjuster's contract without penalty within 3 days of execution or within 3 days after notification to the insurance company of the claim, whichever is later. However, the cancellation provision is extended to 5 days during a state of emergency and for one year after.
- Makes it an unfair and deceptive insurance trade practice for a public adjuster or any other person to circulate or disseminate untrue, deceptive, or misleading information relating to insurance.
- Requires that every public adjuster provide a written estimate of the loss to the insured to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. It also requires that all written estimates be retained for at least five years and be made available to the claimant or insured and the department upon request.

The bill makes numerous changes relating to public adjusters licensure as follows:

- Nonresident applicants must have been continuously licensed in their home state for the past three years.
- The Department of Financial Services must create a specific examination for public adjusters. This examination must be different than the one given to company employee and independent adjusters.
- A suspended license or issuance of a new license to a person whose previous license was terminated for any reason cannot be reinstated unless the person passes the public adjuster examination before reinstatement.
- No examination on workers' compensation or health insurance is required for public adjusters.

The bill creates a public adjuster apprenticeship program and license with the following requirements:

- Applicant must be at least 18 years old.
- Applicant must file a surety bond in the amount of \$50,000 with the department.
- Supervisor adjuster is responsible and accountable for the acts of the apprentice related to claims adjusting.
- Apprentice must complete at least 12 months of employment as a public adjuster apprentice under the supervision of a licensed adjuster.
- Applicant must submit an affidavit from a proposed employer confirming his/her employment as a public adjuster apprentice.
- The DFS has authority to discipline public adjuster apprentices on the same grounds as a public adjuster.

The bill amends the continuing education requirements for public adjusters as follows:

- Public adjusters must take courses that are specifically designed for public adjusters, not company adjusters.
- Courses for public adjusters must include information on duties and responsibilities under law and rules of the department as well as on standard policy forms.
- Public adjusters do not have to take courses on workers' compensation or health insurance.

- Non-resident adjusters can comply by meeting their own state's continuing education requirements if the requirements are substantially comparable to Florida's continuing education requirements and if their own state recognizes reciprocity with Florida's continuing education requirements.

The bill provides requirements for public adjuster contracts as follows:

- Contract for public adjusting services must be in writing and contain a statement that notifies consumers that it is a felony to knowingly and with intent to injure, defraud, or deceive any insurer, file a proof of loss or estimate of cost or repair containing any false, incomplete, or misleading information.

If the claim involves a proof of loss, the bill provides the following:

- Requires a proof of loss to contain a statement that notifies consumers that it is a felony to knowingly and with intent to injure, defraud, or deceive any insurer, file a proof of loss or estimate of cost or repair containing any false, incomplete, or misleading information.

C. SECTION DIRECTORY:

- Section 1:** Amends s. 624.601 making a filing fee applicable to application for reinstatement of suspended license.
- Section 2:** Amends s. 626.015 adding public adjuster apprentice to the definition of "adjuster."
- Section 3:** Amends s. 626.221 relating to examination requirement; exemptions for adjusters.
- Section 4:** Amends s. 626.241 relating to scope of examination for adjusters.
- Section 5:** Amends s. 626.641 relating to duration of suspension or revocation of a license or appointment of an adjuster's license.
- Section 6:** Amends s. 626.854 relating to prohibited practices of public adjusters.
- Section 7:** Creates s. 626.8541 defining "public adjuster apprentice."
- Section 8:** Amends s. 626.865 relating to public adjuster's qualifications.
- Section 9:** Creates s. 626.8651 relating to public adjuster apprentice license and qualifications.
- Section 10:** Amends s. 626.869 relating to adjuster continuing education.
- Section 11:** Amends s. 626.8698 relating to disciplinary guidelines for public adjusters and public adjuster apprentices.
- Section 12:** Amends s. 626.870 relating to reinstatement of a suspended public adjuster license or appointment.
- Section 13:** Amends s. 626.8732 relating to nonresident public adjuster's qualifications.
- Section 14:** Creates s. 626.8796 relating to public adjuster contracts and fraud statement.
- Section 15:** Creates s. 626.8797 relating to public adjusters and proof of loss certification.
- Section 16:** Provides an effective date of October 1, 2008, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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The Department of Financial Services estimates there will be a positive, recurring impact on the Insurance Regulatory Trust Fund of \$38,500. This estimate is based on 700 public adjusters apprentice applications being received annually with fees of \$55 (\$50 application fee and \$5 license appointment fee) (700 X \$55 = \$38,500).

2. Expenditures:

The Department of Financial Services estimates that there will be a negative, non-recurring impact on the Insurance Regulatory Trust Fund of \$129,770 for the cost to upgrade the department's computer systems and of \$31,000 for the cost to develop unique public adjuster examinations, but these costs can be absorbed with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons applying for a public adjuster license will have to meet more stringent requirements under the bill. Persons currently licensed as public adjusters will have to sign a statement under oath for proof of loss, limit their fees, adhere to anti-soliciting provisions, modify contracts to allow consumers to terminate such contracts, and meet other regulatory requirements. Individuals desiring to be public adjuster apprentices must file a \$50,000 bond with the Department, pay fees, and meet other criteria for licensure.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 15, 2008, the Jobs and Entrepreneurship Council heard the bill, adopted four amendments, and reported the bill favorably as a council substitute. The amendments:

- Revised the hours and days a public adjuster can solicit business.
- Shortened the time period during which a public adjuster cannot solicit after a hurricane.
- Required a three day cancellation period for the public adjuster contract.
- Prohibited a public adjuster examination and continuing education courses on workers' compensation or health insurance.
- Required public adjusters to give recorded statements and examinations under oath under specified circumstances.

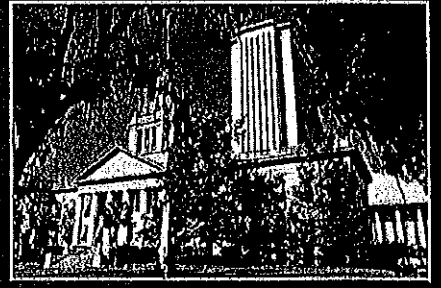
The staff analysis was updated to reflect the council substitute.

On April 21, 2008, the Policy and Budget Council adopted one amendment that removed the requirement that a public adjuster provide a recorded statement under oath to provide information necessary to evaluate the factual basis and validity of a claim and the adjuster's related actions. The amendment inserted the requirement that every public adjuster provide a written estimate of the loss to the insured to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds. It also requires that all written estimates be retained for at least five years and be made available to the claimant or insured and the department upon request.

The staff analysis was updated to reflect the council substitute.

oppaga

OFFICE OF PROGRAM POLICY ANALYSIS
& GOVERNMENT ACCOUNTABILITY



January 2010

Report No. 10-06

Public Adjuster Representation in Citizens Property Insurance Corporation Claims Extends the Time to Reach a Settlement and Also Increases Payments to Citizens' Policyholders

at a glance

The number of licensed public adjusters in Florida has grown significantly in the last six years, and the incidence of complaints, regulatory actions, and allegations of fraud involving public adjusters is generally low. Florida's public adjuster laws are comparable to and in some cases more restrictive than those of other similar states.

Our analysis of Citizens Property Insurance Corporation claims data found that cases took longer to reach a settlement but received higher payments when claimants used public adjusters for claims filed in 2008 and 2009. Public adjusters represented policyholders in 26% of non-catastrophe and 39% of catastrophe claims filed during this period.

Scope

As directed by Chapter 2009-87, *Laws of Florida*, this report examines Florida's regulation of public insurance adjusters and answers three questions.

1. How does Florida regulate public adjusters?
2. How does Florida's regulation of public adjusters compare to that of other states?
3. How frequently do public adjusters represent Citizens Property Insurance Corporation policyholders, and what have been their outcomes on claims processing and payments?

Background

Individuals and businesses purchase insurance to protect their property against monetary losses that can occur due to both non-catastrophic and catastrophic events, including theft, fire, and natural disasters such as hurricanes. When a loss occurs, policyholders can submit claims to their insurance companies to seek monetary compensation for their losses.

In general, when an insurance company receives a claim, it reviews the claimant's insurance policy to determine whether the policy covers the loss and investigates the type and extent of damage to determine the company's liability. The company then estimates the amount of compensation and pays the claim.

Policyholders that disagree with their insurance company regarding claim settlements (e.g. scope of loss, damage estimate) can resolve the dispute through mediation, appraisal, or litigation. Mediation is a process by which a neutral third party helps to facilitate an agreement and is non-binding, whereas appraisal is a binding form of alternative dispute resolution used to establish the amount of the loss. Litigation is a binding resolution via the court system, achieved through a negotiated settlement or trial.

An important part of the claims process is insurance adjusting, which is the practice of



investigating claims to determine the extent of the insurance company's liability. There are three types of insurance adjusters—company, independent, and public.

- **Company adjusters** work directly for an insurance company.
- **Independent adjusters** contract with insurance companies to provide adjusting services.
- **Public adjusters** are independent contractors that work for the policyholder in settling claims.

The insurer typically arranges for a company or independent adjuster to visit the claimant's property to adjust the claim. However, a policyholder may choose to hire a public adjuster to assist in settling the insurance claim due to these persons' expertise in filing claims and negotiating settlements with insurers.

In Florida, public insurance adjusting has received heightened attention because of two key events affecting the state's property insurance industry. First, the state was struck by eight major hurricanes in 2004 and 2005, causing widespread property damage.¹ This resulted in an influx of claims to all property insurers, including Citizens Property Insurance Corporation (Citizens), the state-created insurance company.²

Second, the 2007 Task Force on Citizens Property Insurance Claims Handling and Resolution examined Citizens claims processing and identified consumer protection issues related to public adjuster involvement in claims. The Legislature created this task force to review and make recommendations regarding Citizens' handling, service, and resolution of claims arising

¹ In 2004, the named hurricanes were Charley, Frances, Ivan, and Jeanne, and in 2005, the named hurricanes were Dennis, Katrina, Rita, and Wilma.

² Citizens Property Insurance Corporation is a not-for-profit tax-exempt corporation, whose public purpose is to provide policyholders with affordable property insurance protection. The Legislature established the corporation in 2002 to serve the needs of homeowners who could not obtain property insurance on the open market. As of September 30, 2009, Citizens had 1,064,287 policies in force, annualized premiums of \$2.1 billion, and related loss exposure of \$413 billion.

from the 2004 and 2005 hurricane seasons.³ During its review, the task force identified issues related to public adjusters, including their fees, solicitation practices, and training. The task force cited the large number of new and re-opened claims submitted to Citizens years after the hurricanes occurred, which insurers attributed to solicitation by public adjusters. In addition, the task force heard testimony that some public adjusters were not properly trained or qualified to represent policyholders.

Questions and Answers —

How does Florida regulate public adjusters?

The Department of Financial Services licenses public adjusters and investigates complaints through the Divisions of Agent and Agency Services, Insurance Fraud, and Consumer Services. As of June 2009, Florida had 2,914 licensed public adjusters, which represents a significant increase since 2004. Florida has more public adjusters than other states we examined that have experienced declared disasters in recent years. Complaints and regulatory actions against Florida's public adjusters are generally low.

Florida's current regulatory system includes licensing requirements and various consumer protections. Florida's laws regulating public adjusters address licensing, solicitation, and compensation. Florida requires applicants for public adjuster licenses to pass a licensing exam, have experience or training related to adjusting, post a \$50,000 surety bond, and submit fingerprints for a criminal history review. In addition, licensed public adjusters must complete 24 hours of continuing education every two years.

In response to the findings of the Task Force on Citizens Property Insurance Claims Handling and Resolution, the Legislature amended state laws regulating public adjusters. These new provisions, enacted in Chs. 2008-220 and 2009-87, *Laws of Florida*, were intended to enhance consumer protection. The new provisions

³ Chapter 2007-1, *Laws of Florida*.

- require applicants to pass a written examination;
- require a one-year public adjuster apprenticeship prior to applying for a public adjuster license;
- restrict the hours public adjusters can solicit policyholders to Monday through Saturday between 8:00 a.m. and 8:00 p.m.;⁴
- prohibit public adjusters from contacting or soliciting policyholders until 48 hours after an event; and
- restrict public adjuster fees to 10% of the payment for claims related to declared emergencies and 20% for all other new claims.

Three divisions within the Department of Financial Services manage licensing, complaint processing, and enforcement of public adjuster laws—Agent and Agency Services, Insurance Fraud, and Consumer Services.

The **Division of Agent and Agency Services** licenses public adjusters and investigates complaints alleging violations of the Florida Insurance Code. The division accepts complaints about licensed and unlicensed agents or adjusters from consumers, insurance companies, licensees, and regulatory agencies, including other Department of Financial Services units and the Office of Insurance Regulation.

The **Division of Insurance Fraud** investigates criminal acts related to insurance transactions, including fraudulent claims and allegations against insurance agents to determine whether a crime has been committed. The division accepts referrals from numerous sources, including insurance carriers, private citizens, and regulatory agencies.⁵

The **Division of Consumer Services** provides consumers information and assistance about insurance products and services. The division, which also serves as a mediator between consumers and insurers, accepts and refers

⁴ Section 626.854(6), *F.S.*, specifies that this restriction applies to face-to-face and telephonic communication.

⁵ Section 626.989(6), *F.S.*, requires insurers and other regulated entities in Florida to report suspected acts of insurance fraud to the Division of Insurance Fraud.

complaints relating to public adjusters from other Department of Financial Services divisions.

Florida provides additional consumer protection through its Office of Insurance Consumer Advocate, which represents the interest of the public in insurance matters. The office recommends specific actions in regulatory matters under consideration by state entities such as the Department of Financial Services and the Office of Insurance Regulation and appears in insurance related proceedings conducted by these entities. The office also performs legal research, obtains public input, and proposes legislation that serves the interest of insurance consumers.

The number of licensed public adjusters has grown significantly in recent years. As shown in Exhibit 1, the number of licensed public adjusters in Florida has increased substantially.⁶ Overall, the number of licensed public adjusters increased 330% between Fiscal Year 2003-04 and Fiscal Year 2008-09, growing from 678 to 2,914.

Exhibit 1
The Number of Licensed Public Adjusters In Florida Has Increased Substantially Over the Last Six Years

Fiscal Year	Number of Public Adjusters	Percent Increase from Previous Year
2003-04	678	NA
2004-05	1,203	77.43%
2005-06	1,864	54.95%
2006-07	2,630	41.09%
2007-08	2,755	4.75%
2008-09	2,914	5.77%

Source: OPPAGA analysis.

Florida currently has more public insurance adjusters than the other states we examined that have experienced declared disasters in recent years.⁷ As shown in Exhibit 2, Florida has the

⁶ Because this review focuses on the regulation of public adjusters qualified to assist with property and casualty insurance claims, only these adjusters are included in the data reported.

⁷ We examined the laws of California, Florida, Kentucky, Louisiana, Missouri, New York, Oklahoma, Texas, Mississippi, North Carolina, South Carolina, and Tennessee. These states were selected based on Federal Emergency Management Agency data on declared disasters. We also reviewed the laws of Alabama and Arkansas, but as these states do not license public adjusters, we could not provide information on them in our report.

highest per capita proportion of public adjusters, with about 16 per 100,000 state residents, more than double the per capita ratio in any of the other states. This likely reflects the greater availability of adjusting opportunities due to the numerous hurricanes that made landfall in the state over the last six years.

Exhibit 2
Compared to Other States, Florida Has a Large Number of Public Adjusters

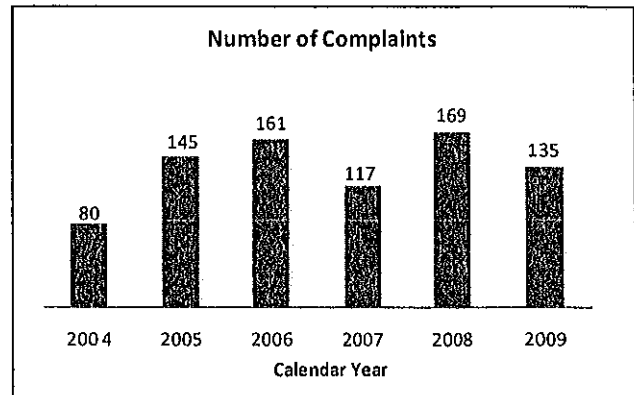
State	Number of Licensed Public Adjusters in 2009 ¹	Number of Public Adjusters per 100,000 Residents
Florida	2,914	15.9
South Carolina	327	7.3
Mississippi	152	5.2
Louisiana	204	4.6
Oklahoma ²	163	4.5
Kentucky	181	4.2
Texas	676	2.8
New York	466	2.4
Tennessee	135	2.2
Missouri	59	1.0
California	321	0.9
North Carolina	50	0.5

¹ These numbers may include public adjusters that are not licensed for property and casualty insurance adjusting.
² The number of public adjusters in Oklahoma is estimated to be between 150 and 175; the midpoint of the range is presented in the exhibit.

Source: OPPAGA analysis based on July 2008 U.S. Census Bureau population data and information provided by the National Association of Public Insurance Adjusters.

The number of complaints, investigations, and disciplinary actions against public adjusters is generally low. An important indicator of the effectiveness of Florida’s public adjuster laws in providing consumer protection is the number of complaints filed against adjusters and enforcement actions taken by the Department of Financial Services. As shown in Exhibit 3, the number of complaints filed against public adjusters with the Division of Consumer Services ranged from a low of 80 in 2004 to a high of 169 in 2008 and remained below 140 in 2009.

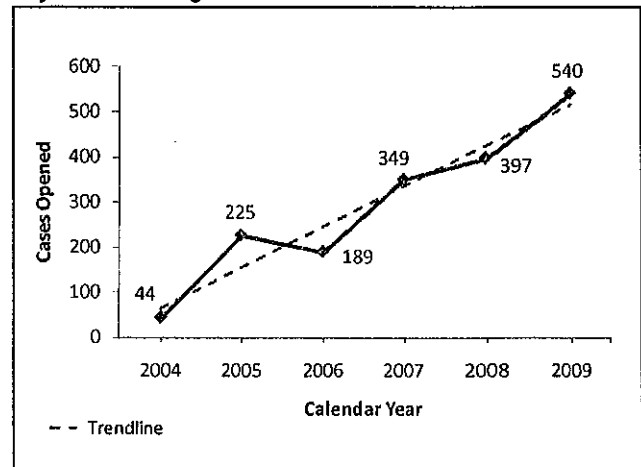
Exhibit 3
The Number of Complaints Against Public Adjusters Has Varied Little In Recent Years



Source: Department of Financial Services, Division of Consumer Services.

The annual number of cases relating to public adjusters that are investigated by the Division of Agent and Agency Services has increased from 44 in 2004 to 540 in 2009 (see Exhibit 4). These investigations primarily are related to alleged failure to maintain surety bonds, fraudulent and deceptive practices, other licensing violations, and unlicensed activities.

Exhibit 4
Division of Agent and Agency Services Public Adjuster Investigations Have Increased



Source: Department of Financial Services, Division of Agent and Agency Services.

From January 2004 to December 2009, the Division of Insurance Fraud received 937 referrals (i.e., complaints) from numerous sources about public adjusters.⁸ Because of these complaints, the division initiated 269 cases and made 31 arrests during this period.

How does Florida's regulation of public adjusters compare to that of other states?

Florida's regulation of public adjusters is comparable to, and in some areas more stringent than, other states. The 12 states (including Florida) we examined that had recent declared disasters typically regulate public adjusters by requiring licensure. Several states also regulate public adjuster solicitation and fees.

Florida's public adjuster licensing requirements appear to be similar to or more stringent than those of other states. Eleven (of 12) states we examined, including Florida, require applicants for public adjuster licensure to pass an exam and post a surety bond.⁹ In addition, most of these states require applicants to have experience or training in insurance adjusting and receive continuing education as a condition of licensure.

Florida imposes some licensure requirements not included in other states' laws. Notably, Florida's year-long apprenticeship or traineeship requirement is not required in the other states we examined.¹⁰ In addition, Florida's bond threshold is equal to or higher than that of all other states we reviewed.¹¹ Seven (of 12) states, including Florida, require applicants to provide fingerprints for a criminal history check.

Public adjuster industry representatives reported that the state's licensure requirements increase the professionalism of adjusters and help prevent unscrupulous business practices.

Like other states, Florida regulates public adjuster solicitation and fees. Of the states we examined, Florida, California, New York, Tennessee, and Texas restrict some aspect of public adjuster solicitation. In Florida, the law does not allow public adjusters to solicit policyholders until 48 hours after an event. In addition to the 48-hour waiting period, Florida public adjusters may only solicit policyholders Monday through Saturday, between the hours of 8 a.m. and 8 p.m.¹² Public adjusters in California are prohibited from solicitation until seven days after a disaster, and in California, New York and Texas, public adjusters are restricted from soliciting policyholders during specific hours of the day.

Public adjuster industry representatives assert that the 48-hour waiting period restricts their business activities and impairs their capacity to help consumers quickly and thoroughly prepare claims; a public adjuster recently filed a lawsuit challenging the constitutionality of this waiting period.¹³ However, consumer advocates and insurance companies indicated that the 48-hour waiting period is too short, because policyholders may be emotionally vulnerable, especially after a catastrophic event, and thus unable to make well-informed decisions. Moreover, insurance company representatives suggested that this period is inadequate for insurance companies to prepare and offer policyholders a settlement.

⁸The Division of Insurance Fraud classifies tips and other information reported to the division as referrals. One referral may include multiple allegations.

⁹ Missouri does not require an exam for licensure and South Carolina does not require a bond.

¹⁰ California, Kentucky, Mississippi, Oklahoma, and Texas laws include provisions for 6-12 month apprenticeships/interim licensure.

¹¹ The dollar value of surety bonds required ranged from \$1,000 to \$50,000. Louisiana, Mississippi, and Tennessee's laws also require public adjusters to post a \$50,000 surety bond.

¹² Section 626.854(6), *F.S.*, specifies that this restriction applies to face-to-face and telephonic communication.

¹³ Frederick W. Kortum, Jr. v. Alex Sink.

In addition, 5 of the 12 states we examined, including Florida, impose limits on the amount public adjusters can charge for their services.¹⁴ In general, public adjuster fees are based on a percentage of the total value of the claim settlement they obtain. For new claims, Florida law requires public adjusters to charge no more than 10% of the amount of insurance claim payments made as the result of a declared emergency, and up to 20% of the amount of all other claim payments.¹⁵ Louisiana, Mississippi, New York, Tennessee, and Texas also require fee caps, ranging from 10% to 25% of the claims payment.

Consumer advocates expressed concern about public adjuster fees, indicating that once these costs are deducted from settlement payments, policyholders may not have sufficient funds to make needed repairs. Conversely, public adjusters asserted that their services assist policyholders in obtaining higher settlements, which facilitates the completion of repairs and replacement of lost property.

How frequently do public adjusters represent Citizens Property Insurance Corporation policyholders, and what have been their outcomes on claims processing and payments?

To evaluate the impact of public adjuster involvement on Citizens Property Insurance Corporation's claims processing, we examined catastrophe claims filed between March 2008 and June 2009 related to the 2004 and 2005 hurricanes and non-catastrophe claims filed during this period.¹⁶ We examined 76,321 claims filed during this period, including 61,324 non-catastrophe and 14,997 catastrophe claims. The catastrophe claims

included both new and re-opened claims. New claims are those that policyholders file for the first time, while re-opened claims were filed earlier but are reinvestigated for supplemental payment.¹⁷ Re-opened claims may be filed years after an event occurred, with little restriction on the timeframe for filing.¹⁸ Over half (7,698) of the catastrophe claims we examined were re-opened claims.

In 2008 and 2009, public adjusters represented many Citizens policyholders who filed claims. Many Citizens policyholders retained a public adjuster to assist them in filing their insurance claims. Specifically, policyholders represented by a public adjuster submitted slightly over a quarter (26%) of non-catastrophe claims filed in 2008 and 2009, including 24% of new and 54% of re-opened non-catastrophe claims.¹⁹ During this period, policyholders represented by a public adjuster filed 39% of catastrophe claims, including 19% of new and 57% of re-opened catastrophe claims.

Citizens' claims with public adjuster involvement took longer to close. New and re-opened claims filed by policyholders with public adjuster representation took considerably longer to close. We used the Kaplan-Meier method to evaluate public adjusters' affect on claims processing time (see Appendix A).

Exhibit 5 shows the typical number of days required to close a catastrophe claim, broken down by whether a public adjuster was involved. As shown in the exhibit, when public adjusters represented policyholders, claims processing typically took between 132 to 296 days longer than claims without public adjuster representation. For example, when public adjusters represented policyholders on new catastrophe claims related

¹⁴ Public adjuster fees are not covered by the insurance policy. Policyholders are responsible for all costs related to the public adjusters' services and generally pay public adjuster fees from the claim settlement.

¹⁵ This limitation only applies to claims made up to a year after the declaration of an emergency.

¹⁶ Section 626.854(11)(b)(1-2), *F.S.*, states that a catastrophe is any event subject to declaration of a state of emergency by the Governor; all other events are non-catastrophic (e.g. house fires).

¹⁷ For example, a policyholder may have incurred roof damage in 2004, notified Citizens of the loss, received a claims payment, and repaired the roof. In 2009, the policyholder may identify ceiling mildew near the area that sustained damage in 2004 and file a claim to repair the damage that originated from the hurricane, although the initial damage occurred more than four years earlier.

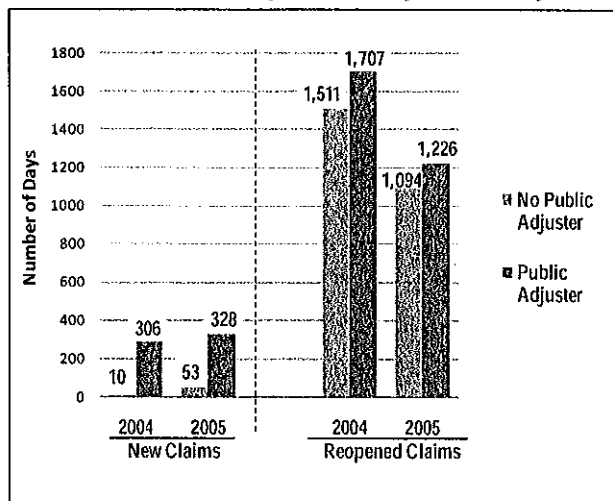
¹⁸ There is no statutory limit on when a claim can be filed. Section 95.11(2)(b), *F.S.*, specifies that the statute of limitations for filing legal action based on a contract (e.g. between an insurance company and a policyholder) is five years.

¹⁹ Attorneys or other parties may also represent policyholders, and these are counted as claims in which a public adjuster is *not* involved.

to the 2004 hurricanes, the typical period from first notice of loss to final settlement was 306 days, compared to 10 days for claims without public adjuster involvement.²⁰ Similarly, when policyholders used a public adjuster for re-opened claims related to 2004 storms, the typical number of days to close the claim was 1,707 days, compared to 1,511 days for claims without public adjuster representation.

In general, the re-opened cases in Exhibit 5 were originally filed in 2004 or 2005, and their lengthy closure time reflects the time from their date of first notice of loss to their eventual re-closure. The typical number of days to final settlement is thus much larger than for new claims, but the cases that involved public adjusters showed a similar pattern of taking longer to achieve settlement.

Exhibit 5
Settlement of Catastrophe Claims Took Longer When Policyholders Were Represented by Public Adjusters



Source: OPPAGA analysis.

Public adjuster representation had the same effect for non-catastrophe claims. The median time to close non-catastrophe claims was 115 days for claims with public adjuster representation and 41 days for those without.²¹

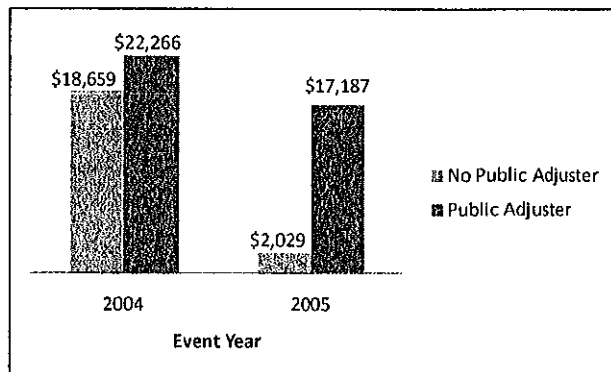
²⁰ 'No public adjuster' means that policyholders were either not represented by any third party or were represented by an attorney.

²¹ We could not provide results for new and re-opened non-catastrophe claims because most of the re-opened claims that were filed in 2008 and 2009 are still open.

Public adjuster representation may prolong claims processing for several reasons. Public adjusters often pursue the paths available to arbitrate a policyholder's claim (e.g., mediation or appraisal), and may present a larger scope of damages to assess, which can require more time to settle. Citizens' officials reported that public adjusters represented policyholders in 61% of mediations and 89% of appraisal arbitrations requested in 2008. Appendix B discusses additional reasons cited by public adjusters and insurers for why claims may take longer to settle when public adjusters are involved.

Policyholders with public adjuster representation typically received higher settlements than those without public adjusters. Policyholders that filed catastrophe claims in 2008 and 2009 generally received larger insurance settlements than policyholders that did not hire these persons. The typical payment to a policyholder represented by a public adjuster was \$22,266 for claims filed in 2008 and 2009 related to the 2004 hurricanes (see Exhibit 6). In contrast, policyholders who did not use a public adjuster received typical payments of \$18,659. The difference in payments was larger for claims related to 2005 hurricanes, with public adjuster claims resulting in payments that were 747% higher. However, as policyholders pay public adjuster fees as a percentage of their settlement, their net settlement would be lower than this amount.

Exhibit 6
Public Adjuster Representation Typically Resulted in Larger Payments to Policyholders



Source: OPPAGA analysis. Data refers to the median (50th percentile or typical) payment.

For non-catastrophe claims, policyholders who used public adjusters received an estimated \$9,379 on their claim, compared to \$1,391 for those policyholders that did not use a public adjuster (a difference of 574%). As stated earlier, policyholders' net settlement would be lower than this amount.

Agency Response ---

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the state's Chief Financial Officer and to the President/CEO and Executive Director of Citizens Property Insurance Corporation for their review and response.

The president's written response to this report is presented in Appendix C. The state's Chief Financial Officer did not provide a written response to this report.

Appendix A

Methodology Used to Assess the Impact of Public Adjuster Representation on Time to Process Claims and Payment to Policyholders

To assess the impact of public adjusters on the time it took to process policyholder claims and the amount of money paid to policyholders by Citizens Property Insurance Corporation, we compared cases of policyholders represented by public adjusters to cases filed by policyholders without such representation.

Study population. We evaluated all claims filed with Citizens from March 2008 to June 2009, for a total of 76,321 claims. Of this population, 21,545 had public adjuster representation. Our comparison group consisted of the 54,776 claims that either had no representation or were represented by a party other than a public adjuster (such as attorneys).

Data. For the study population, Citizens provided the data elements noted below.

- Type of representation for the insured (public adjuster, attorney, none)
- Nature of the claim (catastrophic or non-catastrophic)
- Severity of the loss
- Insured value of the property
- Report year
- Date the policyholder noticed the loss
- Dollar value of Citizens' initial offer to a policyholder
- Last amount paid to a policyholder
- Payment date
- County in which the property was located

Methods of Analysis. Using the Kaplan-Meier product-limit estimator, we estimated the time for new catastrophe and re-opened catastrophe claims associated with those new claims to close, relative to whether or not a public adjuster was involved. Some re-opened claims are related to the new claims in this sample; however, many were first filed years earlier, e.g., in 2004 and 2005, and re-opened during the sample's timeframe. Survival analysis statistical techniques, such as the Kaplan-Meier method, calculate the probability of an event occurring, such as a case closing, given how much time has passed. The Kaplan-Meier method uses all claims, whether closed or not, to calculate a median time to close. This technique avoids the problem of just using closed cases from a particular period, which can underestimate how long it takes to close the typical case. Data typically refers to the median (50th percentile or typical) number of days to close a case. However, data relating to new 2004 claims with public adjusters is a mean, as a median could not be calculated.

In addition, we compared median payments on new and re-opened claims with public adjuster representation to those without public adjusters, and ran separate models on non-catastrophe claims.

Appendix B

Public Adjusters and Insurers Have Different Opinions about Factors Affecting the Claims Process

Public adjusters and insurance companies cited different opinions regarding the effect public adjusters have on the insurance claims process. The following table aggregates the opinions provided by Florida public adjusters and representatives of insurance companies operating in the state, including Citizens Property Insurance Corporation.

Issue	Public Adjusters	Insurance Companies
Relationship with policyholders	Public adjusters are the only advocates that exclusively represent the policyholder. Insurance companies attempt to dissuade policyholders from hiring public adjusters.	Public adjusters insulate policyholders from insurance companies and create distrust between the insurance company and the policyholder. Public adjusters reduce policyholder retention.
Claims processing	Insurance companies cause delays in settling claims due to <ul style="list-style-type: none"> ▪ poor communication; ▪ failure to respond to requests in a timely manner; and ▪ excessive demands for documentation. Insurance companies impose too much burden on policyholders to prove their claims.	Public adjusters increase the time to settle claims when they <ul style="list-style-type: none"> ▪ provide incomplete information; ▪ make it difficult for insurance companies to schedule inspections and meet with policyholders; ▪ make it necessary for insurance companies to spend additional time investigating and verifying damage estimates provided by public adjusters; and ▪ encourage policyholders to use appraisal, mediation, and litigation to resolve claims.
Public adjuster solicitation practices	The ban preventing public adjusters from contacting policyholders until at least 48 hours after the occurrence of an event <ul style="list-style-type: none"> ▪ prevents policyholders from becoming aware of their right to be represented and ▪ restricts public adjusters, but allows contractors, roofers and other interested parties to contact policyholders. 	Company adjusters should have the opportunity to settle claims with policyholders before public adjusters get involved. Public adjusters utilize misleading advertising to solicit business with policyholders.
Claims settlement	Insurance companies are not motivated to provide full compensation to policyholder since their responsibility is to shareholders.	Public adjusters make it difficult for policyholders to make all repairs included in the claim because a portion of the settlement amount goes to the public adjuster. Public adjusters increase the cost of insurance for all consumers.
Public adjuster fees	The current fee structure allows fair compensation to public adjusters.	The current fee structure encourages public adjusters to inflate or falsify claim estimates.
Recommendations	Rescind ban preventing public adjusters from contacting policyholders during the first 48 hours after an event. Establish more stringent enforcement of laws and regulations governing the public adjusting industry.	Subject public adjusters to an examination under oath similar to policyholders. Establish fee limits for supplemental and re-opened claims. Require public adjusters to disclose their fee in contracts provided to the policyholder's insurance company. Limit the amount of time after an event for policyholders to file a claim. Require public adjusters to provide policyholders a copy of written estimates and correspondence submitted to the insurance company regarding their claim. Establish more stringent enforcement of laws and regulations governing the public adjusting industry.

Source: OPPAGA analysis.

Appendix C

CITIZENS PROPERTY INSURANCE CORPORATION
101 NORTH MONROE STREET, SUITE 1000
TALLAHASSEE, FLORIDA 32301

TELEPHONE: (850) 513-3700 FAX: (850) 513-3900



January 5, 2010

Gary R. VanLandingham, Ph.D., Director
Office of Program Policy Analysis and
Government Accountability
Room 312 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1475

Dear Dr. VanLandingham:

We have received and reviewed the Office of Program Policy Analysis and Government Accountability's (OPPAGA) preliminary report titled *Public Adjuster Representation in Citizens Property Insurance Corporation Claims Extends the Time to Reach a Settlement and Also Increases Payments to Citizens' Policyholders*.

Citizens has no recommendations for amendments or additions to this report.

We appreciate the time your staff availed to Citizens and the professionalism they exhibited in completing this report. Please do not hesitate to contact Christine Ashburn, Legislative and External Affairs Director, or myself if you need anything further regarding this report.

Respectfully,

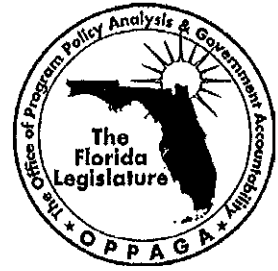
A handwritten signature in black ink, appearing to read "SA Wallace".

Scott Wallace
President/CEO and Executive Director

cc: Kim Mills, Director of Auditing, Executive Office of the Governor

James R. Malone, Chairman, Collier County
William P. Corry, Indian River County • Carol Everhart, Pinellas County • Earl Horton, Pinellas County
Sheriff W. Hudson, Miami-Dade County • Allan Katz, Leon County • Carlos Lacasa, Miami-Dade County
Thomas Lynch, Palm Beach County • Scott Wallace, President/CEO & Executive Director

The Florida Legislature
Office of Program Policy Analysis
and Government Accountability



OPPAGA provides performance and accountability information about Florida government in several ways.

- Reports deliver program evaluation, policy analysis, and Sunset reviews of state programs to assist the Legislature in overseeing government operations, developing policy choices, and making Florida government better, faster, and cheaper.
- PolicyCasts, short narrated slide presentations, provide bottom-line briefings of findings and recommendations for select reports.
- Government Program Summaries (GPS), an online encyclopedia, www.oppaga.state.fl.us/government, provides descriptive, evaluative, and performance information on more than 200 Florida state government programs.
- The Florida Monitor Weekly, an electronic newsletter, delivers brief announcements of research reports, conferences, and other resources of interest for Florida's policy research and program evaluation community.
- Visit OPPAGA's website at www.oppaga.state.fl.us

OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

Project supervised by Kara Collins-Gomez (850/487-4257)

Project conducted by Jeanine Brown (850/487-4256), Emily Leventhal (850/487-9239), and Larry Novey (850/487-3768)

Gary R. VanLandingham, Ph.D., OPPAGA Director

Subject:

FW: Response from the Florida Department of Financial Services

From: Laura Anstead <Laura.Anstead@myfloridacfo.com>

Date: December 23, 2011 10:28:35 AM EST

To: 'Frank Artiles' <frankartiles@me.com>

Cc: Ashley Mayer <Ashley.Mayer@myfloridacfo.com>, Greg Thomas <Greg.Thomas@myfloridacfo.com>

Subject: RE: Response from the Florida Department of Financial Services

Representative Artiles,

I apologize for not responding to your most recent e-mail of December 13, 2011. I have been out of the office for surgery since December 12th.

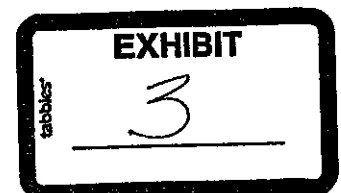
I have cut and pasted your questions below and have provided you with answers in bold face type.

I hope that you and your family have a wonderful Holiday Season!

- 1) I would like to know what DFS believes or defines as "an original offer"? **The first offer made by Citizens. As this statute is only applicable to Citizen's, Citizen's would be in the best position to answer this question more completely.**
- 2) Is an original offer: written, verbal, settlement offer, supplemental, appraisal? **It would be an original offer in whatever form or manner Citizen's considers it to be an "original offer".**
- 3) Who is authorized to make the "original offer"? Independent Field adjuster, Company Adjuster, Engineer, Citizens Examiner, Attorney or anyone affiliated with Citizens? **The original offer would be made by whomever Citizens indicates has the authority to give such an offer.**
- 4) Please explain your statement, "the difference between the original offer made by Citizens and the amount actually paid"? By your own interpretation, if no original offer was made by Citizens or amount actually paid then you cannot limit the amount to 10%. Please explain. **If no payment is made, there is no payment to assess a fee against. If Citizens never makes an offer but makes a payment on the claim then that is considered by default to be the "original offer" and the public adjuster would be limited to a 10% fee on any additional claim payments made after that initial payment.**
- 5) Is the Department of Financial Services regulating Appraisal? **No.**
- 6) Your statement: "between the original offer made by Citizens and the amount actually paid ". Does this include supplemental offer, appraisal, mediation, umpire final awards? Yes, if the company actually pays. can the Department of Financial Services expand its regulation of an unregulated industry such as Appraisal without clear Legislative intent? I should know, I tried to License Appraisal and Umpires and was told that DFS didn't want to start a cottage industry. This DFS interpretation gives the Department expansive regulatory powers which were never given by the Legislature or in Statute. **Appraisal is a process utilized to help determine the value of a claim in an effort to resolve a claim for all interested parties. The Department does not determine nor regulate fees paid to the appraiser or umpire.**

Best wishes,

Laura



From: Frank Artiles [mailto:frankartiles@me.com]
Sent: Tuesday, December 13, 2011 11:13 PM
To: Laura Anstead
Subject: Re: Response from the Florida Department of Financial Services
Importance: High

Ms. Anstead,

Please provide me with a timeline to the requested questions.

Thank you and Happy Holidays.

Frank Artiles
State Representative District 119
305-305-2110

On Dec 2, 2011, at 5:46 PM, Laura Anstead wrote:

Representative Artiles,

Thank you for your inquiry. We appreciate your interest and are thoughtfully considering your questions.

I will contact you next week in response to your questions and concerns.

I hope you have a great weekend.

Laura

From: Frank Artiles [mailto:frankartiles@me.com]
Sent: Friday, November 25, 2011 12:20 PM
To: Laura Anstead
Cc: Greg Thomas; Ashley Mayer
Subject: Re: Response from the Florida Department of Financial Services

Ms. Anstead,

Thank you for your prompt response regarding my original email. I have concerns regarding the following statements in your response: (highlighted in red)

"A review of this language reveals that Section 627.351(6)(a)(6) is not, by its language, limited to supplemental claims. Thus, it is the Department's belief that based upon the plain language of the statute, a public adjuster, when handling Citizens' claims, is limited to receiving 10% of the difference between the original offer made by Citizens and the amount actually paid *regardless of when the public adjusting contract was executed.*

I would like the Department of Financial Services to answer the following questions regarding their belief, definitions or interpretations.

- 1) I would like to know what DFS believes or defines as "an original offer"?
- 2) Is an original offer: written, verbal, settlement offer, supplemental, appraisal?
- 3) Who is authorized to make the "original offer"? Independent Field adjuster, Company Adjuster, Engineer, Citizens Examiner, Attorney or anyone affiliated with Citizens?
- 4) Please explain your statement, "the difference between the original offer made by Citizens and the amount actually paid"? By your own interpretation, if no original offer was made by Citizens or amount actually paid then you cannot limit the amount to 10%. Please explain.
- 5) Is the Department of Financial Services regulating Appraisal?
- 6) Your statement: "between the original offer made by Citizens and the amount actually paid ". Does this include supplemental offer, appraisal, mediation, umpire final awards?
- 7) How can the Department of Financial Services expand its regulation of an unregulated industry such as Appraisal without clear Legislative intent? I should know, I tried to License Appraisal and Umpires and was told that DFS didn't want to start a cottage industry. This DFS interpretation gives the Department expansive regulatory powers which were never given by the Legislature or in Statute.

You are probably unaware of this but there was an amendment withdrawn by the SB 408 Bill Sponsor on the house floor which specifically stated that public adjusters are limited to 10% on all citizens claims. I find it odd that it was withdrawn yet DFS implements it through interpretation. It would be much easier to say that the bill is ambiguous and vague at best but instead it is being enforced by DFS.

Thank you again.

Frank Artiles
State Representative District 119
305-305-2110

On Oct 13, 2011, at 12:23 PM, Laura Anstead wrote:

Dear Representative Artiles,

Thank you for your email correspondence of September 27th, which has been referred to me for response. In your email, you express your belief that Section 627.351(6)(a)(6), Florida Statutes only relates to "supplemental or excess" claims and that it does not prevent public adjusters from obtaining a 20% fee when the public adjuster enters into a contract *prior* to Citizens Property Insurance Corporation making an initial offer.

As you are aware, SB 408 was passed during the 2011 Legislative Session and included provisions that affected public adjusters. There were several sections of SB 408 that related to public adjusters - one of those provisions amended Section 627.351, F.S. and only addresses Citizens Property Insurance Corporation. The other revisions in SB 408 that relate to public adjusters are more general in nature and include a fee cap for supplemental claims and a technical change requiring public adjusters to designate types of claims as supplemental, emergency or non-emergency. [See Section 626.854 (11) (a) (b) 1., 2. and Section 626.8796 (2).] Amendments to Section 627.351, F.S., did not relate to supplemental, emergency or non-emergency claims, but simply related to a fee cap on all claims made to Citizens.

Section 627.351(6)(a)(6) now states:

" For any claim filed under any policy of [Citizens Property Insurance Corporation], a public adjuster may not charge, agree to or accept any compensation, payment, commission, fee or other thing of value that is greater than 10% of the additional amount actually paid in excess of the amount originally offered by Citizens on the claim. (Emphasis supplied.)

A review of this language reveals that Section 627.351(6)(a)(6) is not, by its language, limited to supplemental claims. Thus, it is the Department's belief that based upon the plain language of the statute, a public adjuster, when handling Citizens' claims, is limited to receiving 10% of the difference between the original offer made by Citizens and the amount actually paid *regardless of when the public adjusting contract was executed.*

Should you have additional questions regarding this response, please do not hesitate to contact me.

Best regards,

Laura

LAURA ANSTEAD
MANAGING ATTORNEY
DIVISION OF LEGAL SERVICES
THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES
200 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399-0333
(850) 413-4210
(850) 487-4907 FAX
LAURA.ANSTEAD@MYFLORIDACFO.COM

DISCLAIMER: Please note that Florida has a broad public records law. Most written communications to or from state officials regarding state business are considered to be public records and will be made available to the public and the media upon request. Therefore, your e-mail message may be subject to public disclosure.

From: Frank Artiles [<mailto:frankartiles@me.com>]
Sent: Tuesday, September 27, 2011 10:37 PM
To: askDFS
Subject: Public Adjuster Fee Question:

Dear CFO,

I would like to know the Departments interpretation regarding your emailed statement:

Be advised that a public adjuster cannot charge, agree to or accept more than 10% of any amount paid in excess of the original offer that is made by Citizens. If a public adjuster enters into a contract prior to Citizens making an offer, then the "original offer" is when Citizens makes its first offer.

If a public adjuster enters into a contract prior to citizens making an offer then a Public Adjuster could charge 20% prior to the original offer. Moreover, the language used is discussing supplemental or EXCESS that is why your interpretation is an expansion of Legislative Intent.

I should know, I was on the house floor and committees. Need an explanation as soon as possible.

Frank Artiles J.D., LL.M
Pinnacle
305-305-2110

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN AND FOR
LEON COUNTY, FLORIDA

CASE NO. 2011-CA-842

EAST COAST PUBLIC ADJUSTERS, INC., a
Florida corporation,

PREMIER PUBLIC ADJUSTING, INC., a
Florida corporation,

Plaintiffs,

v.

JEFF ATWATER in his capacity as CHIEF
FINANCIAL OFFICER OF THE STATE, and
the FLORIDA DEPARTMENT OF
FINANCIAL SERVICES.

Defendants.

PROPOSED ORDER

THIS CAUSE came before the Court upon Plaintiffs' Motion for Leave to File Amended Complaint and the Court having considered the Motion, and having been otherwise fully advised in the premises it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion is GRANTED.
2. Plaintiffs Amended Complaint shall be deemed filed as of the date of this Order.

DONE AND ORDERED in Chambers at Leon County, Florida, on this _____ day of
December, 2012.

HONORABLE TERRY LEWIS
CIRCUIT COURT JUDGE

Copies furnished to:
All counsel of record

