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June 27, 2013

**BY EMAIL (scottydog@nettally.com
and scott@johnsonstrategiesllc.com)
AND REGULAR MAIL**

Mr. James Scott Johnson
Johnson Strategies, LLC
8976 Eagles Ridge Drive
Tallahassee, Florida 32312

RE: Your Blog – Contingency Fees – A Moral Hazard

Dear Mr. Johnson:

I write to you as General Counsel to the National Association of Public Insurance Adjusters (www.napia.com) and in reply to the above referenced blog which you posted on your website on June 18, 2013. On behalf of NAPIA, I am writing this letter, which I will also post as my blog on the NAPIA website, to correct the numerous misrepresentations and inaccuracies in your blog. As a fellow professional, I am concerned that you would post this information without performing due diligence to assure its accuracy.

To begin, the title of the blog itself, Contingencies Fees – A Moral Hazard, is most disturbing. As you know, 45 of the 50 States in this country license public insurance adjusters, which means that in over 90% of the states in this county, public adjusters are regulated by the State Insurance Department, just as insurance companies, insurance agents, and, in many cases, company and independent adjusters. My client is composed of professionals who are fully recognized and licensed by the State Departments. In 43 of those 45 states, percentage fees are the norm. We are working closely with the insurance departments on these issues.

Secondly, to equate a percentage fee with insurance fraud is an absolutely inaccurate and irresponsible position to place on a publicly reviewed blog. Public Insurance Adjusters have been licensed in this country for over 100 years, and to even suggest that a percentage fee in any way leads to insurance fraud is to slander the reputation of a profession which I am honored to represent.

The fact of the matter is that percentage fees are the norm because many consumers of insurance products could not afford to pay a public adjuster on an hourly rate basis.



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It is also inaccurate to suggest that public adjusters work on contingent fees. Contingent fees seem to suggest a question of liability as is present in the third party claims process in a legal case. More accurately, public adjusters work on a **percentage** of a recognized contractual claim.

In your blog, you write that:

"the rub under the contingency fee system is that "claim inflation" is also necessary to pay the PA who gets his/her percentage (10% to 20%) out of a claim amount and regardless of how many hours they put in, how hard they work and sometimes, regardless of whether they were even needed."

Like many other issues surrounding business deals in this country, the decision as to whether to hire a public adjuster is no different than the decision as to whether to hire an attorney for an accident case, a real estate broker for the sale of a house, or a stock broker for the purchase of stock. To suggest that simply hiring a public adjuster leads to "claim inflation" is also to suggest that those other regulated professions necessarily cause inflation in tort cases or housing prices or the like because a consumer decides to hire a professional, such as an attorney or a real estate broker. Public Adjusters are licensed just like these professionals, and your analysis is simply not accurate.

You go on to write:

"this is exactly why some states don't allow public adjusting or prohibit contingency fees. It's against public policy to pay someone out of the claim amount, not because it diminishes the policyholders payout so much but, because it's the quintessential moral hazard. It breeds fraudulent inflation of claims under the guise of "premium recoupment" or "deductible elimination". [sic]

Let's be very clear on the words you set forth in this paragraph. To begin, as written, 45 states of the 50 fully license public adjusters, and recognize public adjusters as professionals coming under the jurisdiction and control of the State Insurance Department. 43 of those 45 states allow percentage fees. If this is against public policy, I think that is an issue you should take up with the State Insurance Departments. NAPIA has worked closely for many years with the NAIC in the regulation of public insurance adjusters, including but not limited to the development of the NAIC Model Act, which has been enacted in 15 of the states which license public adjusters. I would be delighted to attend any meeting with you at the NAIC and/or with any State Insurance Commissioner to discuss your unsupported "public policy" argument.

With regard to your bald, unsupported assertion that percentage fees "breeds fraudulent inflation of claims under the guise of premium recoupment or deductible elimination", I must write that I have no idea what you mean in this sentence. Public adjusters have nothing to do with the premiums charged by insurance carriers or the deductibles that they set with regard to property coverage for their insureds. As will be detailed below, the statistics prove that property insurance premiums are not lower in states that do not license public adjusters. Public adjusters, quite simply, are retained by an insured to handle all aspects of a first party property claim, including but not limited to, inventory, estimates, appraisals, and negotiating a fair settlement with the insurance carrier for the insured client. You will agree, with me, I



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think, that the insurance carrier's adjusters work for the carrier, and it is simply fitting and fair that the insured public at least have a choice to hire their own professional to measure damages and present their claim to the insurance carrier.

Your next paragraph is perhaps the most offensive, at least to me personally, of the many misrepresentations in the blog. You write as follows:

Now, for those PA's who don't believe the contingency fee system acts as an incentive to commit fraud, don't be angry at me for saying it does. Your own association(s) say so! The National Association of Public Insurance Adjusters (NAPIA), for example, favors limiting contingency fees. During legislative testimony one of the reasons given by NAPIA General Counsel Brian Goodman for limiting New Jersey's fee arrangement to 12.5% was that, it works well in other states and a higher percentage is an incentive for fraud. Heck, Florida pays up to 20%! [sic]

To begin, let me be very clear that while you write that "during legislative testimony" I spoke in support of a fee cap in New Jersey, I have no idea how you came to this conclusion, as I never testified anywhere in the New Jersey legislature regarding their consideration of a fee cap in last year's legislative session, or at any time. I did write a letter to Assemblyman Gerald Green dated January 2, 2013, in which, on behalf of NAPIA, we supported the position of the New Jersey Association of Public Insurance Adjusters, advocating a 12.5% blended fee cap, identical to the one currently in force in the neighboring State of New York. However, in that letter, at no time did I ever intimate or suggest in any way that a contingency fee system acts as an incentive to commit insurance fraud. To represent that I did is inaccurate and should immediately be taken down from your website. Please consider this letter as my demand that this inaccurate statement be taken down and that you retract this statement.

The fact of the matter is that of the 45 states that license public adjusters, 14 have a statutory fee cap, and NAPIA, while never advocating a fee cap, does work with State Insurance Departments on a regular basis to assure that fee caps, if enacted, are fair both to the public adjusting profession and to the insured public, when they are enacted. Our support of a suggested 12.5% fee cap in New Jersey was garnered after consultation with the New Jersey Public Adjusters Association, with whom we have a very close relationship, and after their request that we support their position on this issue. However, I have never stated that a percentage fee system acts as an incentive to commit insurance fraud. To write that I did is slanderous both to me and my client. The reasons for supporting fee caps on occasion are many, but the prevention of insurance fraud is not one of them. To use my letter and NAPIA's position to support your own strident advocacy against members of my client's profession is inappropriate, and I am writing this to correct the record officially, as I am very well aware of NAPIA's position and of what I have consistently advocated as their counsel.

Additionally, I note that you are looking for a table or chart or list that shows the national picture for public adjuster compensation. This is an email that was forwarded to me by our immediate Past-President Ron Reitz. As written, 14 states have statutory fee caps, and the rest of the states allow the market to set the proper percentage fees charged by public insurance adjusters. I have spent many years working with the NAIC in many states on this issue, and I am not simply going to provide you with my



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work product or chart on this, as your use of it could be for a most untrustworthy reason, particularly based upon your blog which I am responding to in this letter.

In your blog, you also reference an article in The Press Register in Alabama which referenced the fact that the PCI, Property & Casualty Insurance Association, showed that percentage fees drive up the price of insurance. This is an unsupported allegation which is not true. Insurance rates in Arkansas and Alabama, two states of the five in this country which do not license public adjusters, are not significantly lower (if lower at all) than insurance rates in Louisiana, Tennessee and Florida, neighboring states in the Southeast that do license public adjusters. We fully expect to obtain licensing in Alabama in the near future.

I would appreciate your correcting your blog as referenced in my letter, but I suspect that you will not do so, as past matters you have written seem to indicate a clear proclivity on your part to doing whatever you can to misrepresent the true workings of a professional public insurance adjuster and to weaken the profession in the State of Florida and nationally. For this reason, I will be sure to post this letter on the NAPIA blog so that the record is accurate. We are quite serious about obtaining retractions when facts are misrepresented and protecting the reputation of the professionals who work hard for the public and comprise the membership of NAPIA.

In closing, let me write that NAPIA has been a proud association for over 63 years. We have a stringent code of ethics, and we have the respect of many State Insurance Departments and the NAIC in properly regulating the profession of public insurance adjusting. The NAIC and many states have even enacted our Code of Ethics in their licensing bills. It is unfortunate that individuals such as yourself twist the facts for their own purposes in order to try to impeach the reputation of the hundreds of professional public insurance adjusters performing valuable services for insureds in this country, those insureds who have suffered a property loss.

Sincerely,

A handwritten signature in black ink that reads "B. S. Goodman". The signature is written in a cursive, flowing style.

Brian S. Goodman

BSG/mjc

cc: Ron Reitz, CPPA
Art Jansen, Jr., SPPA
Ray Altieri, Jr., CPPA
Steve Dyal
Marjorie Musick
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