



PAMIC

Pennsylvania Association of
Mutual Insurance Companies

Steven C. Elliott
President

February 22, 2002

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Insurance Department
Office of Policy, Enforcement
& Administration

Peter J. Salvatore
Regulatory Coordinator
Commonwealth of Pennsylvania
Department of Insurance
1326 Strawberry Square
Harrisburg, PA 17120

RE: Public Adjuster Contracts and Licensing, 31 PA Code, Ch. 115

Dear Mr. Salvatore:

I am President of the Pennsylvania Association of Mutual Insurance Companies (PAMIC). PAMIC's membership includes 84 mutual property/casualty insurance companies. The purpose of this letter is to offer comments and suggestions for improvement to the Insurance Department's proposed regulation on public adjusters as published in the February 2, 2002, Pennsylvania Bulletin. As always, thank you for the attention you and the Department always accords our membership's concerns.

The proposed regulation, as published, contains several positive features. We note the modification of the contract cancellation features to conform to the four-day requirement of the new statute. We understand the Department's stated preference for avoiding repetition of the statute. But we are significantly pleased with the statutory limitation on solicitation in the 24 hours following a fire or other occurrence. People frequently turn to one source as a convenient compilation of their obligations and inclusion of this important prohibition in the body of the regulation can only increase compliance.

The proposed regulation also states that the public adjuster contract may not contain any term allowing the adjuster's fee to be collected when the amount due from the insurer has not been paid or allowing the entire fee rather than a percentage to be collected from the first check. Proposed Reg. Sec. 115.2. (b) (1). The next subsection prohibits contract terms that would require the insurer to issue a check in the name of the public adjuster only. These are valuable features of the new regulation and are obviously important consumer protections.

PAMIC believes these consumer protections may be more adequately safeguarded by the following modifications. Proposed Reg. Sec. 115.2.(b) (2) should be read that the public

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adjuster contract must affirmatively state that the insurance company check may not be issued only in the name of the public adjuster. The Department would be hampered in enforcing the requirements of subsection (1) if checks were issued solely to the public adjuster. As the subsection reads now, it only forbids contractual language "requiring" such issuance, leaving open the possibility of offering this as a "service" to the insured and securing "voluntary" authorizations of such check issuance.

Proposed Reg. Sec. 115.2 could be further enhanced by a mandatory contractual provision stating that nothing in the contract will prohibit the insurer from contacting its policyholder in the normal claims adjustment process. Insurance companies have independent contractual and regulatory obligations that should not be hampered by attempts to curtail normal and necessary communication between the parties to the policy.

PAMIC strongly maintains that the public adjuster contract should be required to contain the insurance fraud notice language required by Pennsylvania's insurance fraud statute, 18 P. S. Sec. 4117(a)(3). This language notifies users of the fact that any person who knowingly and with the intent to defraud any insurer, makes a false, incomplete or misleading claim commits insurance fraud. The appropriate language is set out at Sec. 115.2. (8) of the PAMIC proposed regulations enclosed with this letter as an exhibit. The Department has exercised diligence in making sure that this important language is included in all claims related documents and omission of it here would be a glaring gap in the circle of consumer protection.

Proposed Sec. 115.3, Additional Procedures, would be vastly improved by addition of a subsection requiring that a copy of the public adjuster contract be supplied to the insurer at the inception of the adjustment process. Typically, the notice an insurer receives from the public adjuster contains a recital that the policyholder has assigned at least part of the expected performance under the contract of insurance (payment of loss) to a third party (the public adjuster). This is the assignment of a right to a contractual performance as to which significant consumer protections attach under the Unfair Insurance Practices Act. Moreover, public adjusters routinely request full copies of the policy or policies of insurance that might respond to the claim. There should be bilateral disclosure by both parties, policy to the public adjuster, public adjuster contract to the insurer.

Proposed Sec. 115.3(a)(1) contains a provision that the public adjuster must "verbally" inform the consumer of his or her rights to cancellation. The previous regulation, in making this requirement, used the word "orally." In the past, the word "verbal" meant using words, as distinguished from using gestures or pictures, for example. The word "oral" meant "spoken," the opposite of "written." The American Heritage Dictionary still gives that primary meaning to "oral." It shows six definitions for "verbal," the third of which is "Expressed or transmitted in speech; unwritten." The first two definitions refer to pertaining to the use of words, concerned with words rather than the facts they represent, consisting of words alone without action. If the Department means to change the requirement so that, say, a separate written notice could be handed the consumer at the time of contracting, PAMIC considers this a weakening of the protective action

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mandated by the former regulation. In its place is a redundant piece of paper merely reiterating what is in the contract itself. If the two words are considered synonymous, there is a possibility of misinterpretation. The American Heritage Dictionary, in its usage guide under the entry “verbal,” states that the word “when applied to such words as *agreement, promise, commitment, or understanding* is well established in the sense of *oral*. But anyone who fears misunderstanding may use *oral* instead.” I raise this as a fear of misunderstanding, especially where a term is being changed from the less ambiguous word.

The proposed regulation lacks specific provisions and procedures for revocation or suspension of a license or for imposition of fines. In fact, there is no mention of revocation except in passing at Proposed Reg. Sec. 115.19(e) and (f), and 115.20 (2). Instead, the proposed regulation incorporates by reference the statutory grounds for revocation in the provisions dealing with new and renewal license applications. The omission of specific regulatory guidance as to what acts fall within the prohibited activity and as to the procedures to be followed in a revocation proceeding could lead regulated professionals to make the unwarranted assumption that no significant ongoing regulatory supervision may be expected.

In that regard, PAMIC believes the legislature has contemplated rulemaking defining prohibited activity beyond the bare words of the statute. The following language indicates a legislative intent that the Department define acts that can result in adverse regulatory action regarding licensing. 63 P. S. Sec 1608(a) prescribes that the Department are “charged with the administration and enforcement of this act and shall prescribe, publish, adopt and promulgate rules and regulations in connection therewith.” And the statute further lists, at Sec. 1606(13), “incompetency or untrustworthiness to transact the business of a public adjuster.” This language cries out for enumeration of specific acts. There is a legislative intent for the Commissioner to define such behavior by rule. Likewise, the references to “any fraudulent transaction” at subsection 2 and “violation of any rule or regulation...” at subsection (10) give legislative authority for and clear guidance of the Department in its rulemaking activity. PAMIC has proposed a set of comprehensive regulations of these important licensed insurance professionals. The PAMIC proposals are attached as an exhibit to this letter and were previously shared with the Department earlier in this rulemaking procedure.

Please note in the attached material that PAMIC suggested that these twenty-five prohibited acts “shall be deemed evidence of incompetency or untrustworthiness to transact the business of a public adjuster and shall be grounds for fine, suspension, or revocation of a public adjuster’s license.” The acts so deemed evidence clearly fall within the category of “incompetence or untrustworthiness” and indeed are frequently taken from existing regulations in other jurisdictions. (The source of each specific proposal, where applicable, is noted in the exhibit.) Study of both the proposals and their sources demonstrate that they are well thought out regulations of licensed professionals and are neither exceptional nor controversial.

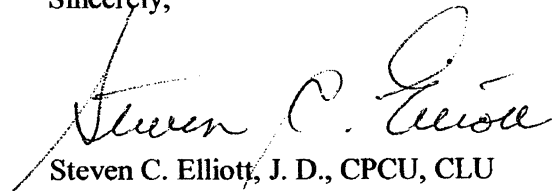
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Likewise, PAMIC would urge consideration of its proposed regulations governing communications. Currently, claims adjusters who are insurance company employees or independent contractors are subject to time constraints intended to assure that policyholder's' claims are expeditiously adjusted. The same concern for consumer protection that motivates those regulations argues for their applicability to public adjusters as well.

The Department is to be commended for its efforts in drafting this difficult regulation. The provisions for contract cancellation, for handling of settlement checks, and for licensing and educational requirements are excellent and bespeak much careful work. But it seems clear that, in enacting the statutory changes in P.L. 260, No. 72, Act of December 20, 1983, the legislature was inviting the Department to regulate these important insurance professionals much more closely in the consumer interest.

Thank you once again for your careful and candid consideration of PAMIC's concerns and for your Department's continuing interest in our membership's input on regulatory matters. As always, I will be happy to discuss any questions raised by these comments and suggestions.

Sincerely,



Steven C. Elliott, J. D., CPCU, CLU
President

/encl. (PAMIC proposal)

CC: P. Raub, PAMIC Chairman
J. Bookhamer, PAMIC GA Chair
R. Nyes, IRRC

CHAPTER 115. PUBLIC ADJUSTER CONTRACTS, -
LICENSING AND PRACTICES

§115.1 Definitions
[No change.]

§115.2 Contents of public adjuster contracts, minimum standards.

All public adjuster contracts shall contain the following minimum information:

(1) The title of the contract: Public Adjuster Contract.

(2) Business name, address and phone number of the public adjuster.

(3) Name and address of insured.

(4) The consideration, expressed as a percentage and as a maximum amount.

(5) Date of execution (day, month, year).

(6) Signature of the insured and the public adjuster.

(7) The following language in bold face type of a minimum size of 10 points:

We shall promptly forward to you any written settlement offer made by or on behalf of the insurance company. [Source: Connecticut Regulations §38a-7690-6.]

(8) The following language in bold face type of a minimum size of 10 points:

Any person who knowingly and with the intent to defraud any insurer assists, abets, solicits or conspires with another to prepare any statement that is intended to be presented to any insurer in connection with or in support of a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim, including information which documents or supports an amount claimed in excess of the actual loss sustained by the claimant is guilty of a crime and may be subject to civil and criminal penalties. [Source: 18 P.S. §4117(a)(3).]

(9) [Identical to current §115.2(7) with respect to mandatory Right to Cancel language.]

(10) [Identical to current §115.2(8) relating to Notice of Right to Cancel language.]

§115.3. Additional Procedures.

[No change.]

§115.4 Inducing Cancellation of Contract Prohibited.

[No change.]

§115.5 Prohibited Acts and Revocation, etc. of License

The commission or occurrence of any of the following prohibited acts shall be deemed evidence of incompetency or untrustworthiness to transact the business of a public adjuster and shall be grounds for fine, suspension or revocation of a public adjuster's license:

(1) A misrepresentation of the right to cancel a public adjuster's contract.

(2) A knowing and material misrepresentation of the terms and effect of any insurance contract.

(3) Preparing or submitting an inventory or estimate of loss or damage other than that which is fair or honest. [Source: Ohio Regulations, Rule 3901-1-24(6).]

(4) Preparing or submitting an inventory or estimate which the adjuster knows or reasonably should know is false, deceptive or inflated.

(5) Submitting with any inventory or estimate a disclaimer as to the accuracy of the values or items set forth therein, or a disclaimer of liability or responsibility for its content.

(6) Failing to promptly communicate a written offer of settlement made by or on behalf of an insurer to the insured. [Source: Connecticut Regulations Relating to Terms of Public Adjuster Contracts, §38a-769-6.]

(7) Engaging in a pattern of failing to acknowledge and act promptly upon written or oral communications from insureds or insurers with respect to any claim or loss which the licensee is handling. [Source: Unfair Insurance Practices Act, 40 P.S. §1171.5(10)(ii).]

(8) Engaging in a pattern of failing to act in good faith to effectuate prompt, fair and equitable settlement of claims. [Source: Unfair Insurance Practices Act, 40 P.S. §1171.5(10)(vi).]

(9) Attempting to dissuade or prevent an insured from speaking privately or directly with an insurer, its representatives or any other person regarding the adjustment or settlement of a claim. [Source: Florida Regulations, §4-220.201(5)(a).]

(10) Making any false statements about any insurance company or its employees, agents or representatives. [Source: Connecticut Regulations, §38a-769-3(H).]

(11) Soliciting clients between the hours of 8:00 p.m. and 8:00 a.m.

(12) Attempting in any manner to solicit a loss during the progress of a fire or while the fire department or any of its representatives are in any manner engaged at the damaged premises; or in any way interfering with the performance of the duties of an investigator of any fire department, or law enforcement official. [Source: Ohio Regulations, Rule 3901-1-24(2).]

(13) Owning or acquiring any direct or indirect financial interest in any real or personal property which is the subject of a loss being adjusted, or owning or acquiring any financial interest in the sale of any salvage of any property which is the subject of a loss being adjusted. [Source: Ohio Regulations, Rule 3901-1-24(B)(7).]

(14) To pay or cause to be paid any compensation or thing of value to any person in consideration of, or as an inducement for the referral of a client or potential client. [Source: Connecticut Regulations, §38a-769-3.]

(15) Engaging in or attempting to engage in any fraudulent transaction with respect to a claim or loss that licensee is adjusting. [Source: Pennsylvania Public Adjusters Act, 63 P.S. §1606(a)(2).]

(16) Misrepresentation of the services offered or the fees or commission to be charged. [Source: Id. §1606(a)(3).]

(17) Misappropriation, conversion to his own use or improper withholding of monies held on behalf of an insured. [Source: Id. §1606(a)(5) modified.]

(18) Conviction by any court of, or a plea of guilty or nolo contendere to, a felony, or any crime arising out of acts performed in the business of a public adjuster, or of any other crime involving theft, dishonesty, fraud or crimini falsi. [Source: Id. §1606(4), extensively modified to broaden range of criminal conduct proscribed.]

[Language relating to conviction arising out of crimes performed in the business of a public adjuster is from California Regulations, §2691.18.]

(19) To pay or cause to be paid any commission or any other compensation or thing of value whatsoever to any agent, broker, attorney, partner, clerk, servant, employee or any other person, whosoever hired by or employed by or with any insured named in any policy of insurance as an inducement or solicitation to influence the contracting of services for the services of public adjuster or public adjuster solicitor with any insured. A public adjuster may utilize the services of any person authorized by the insurer to assist in connection with an insured's claim, provided said services must not conflict with the services required to be rendered by a public adjuster. [Source: Pennsylvania Public Adjusters Act, §1606(a)(6).]

(20) To receive, directly or indirectly, any compensation, commission, or thing of value or profit from any person, partnership, association or corporation engaged or interested in the business of salvage, repair, replacement, restoration, renovation or demolition of damaged property, real or personal, unless such compensation, commission or thing of value or profit is disclosed to the insured and agreed to in the contract. [Source: Id. §1606(a)(7).]

(21) Removal of a public adjuster's or public adjuster solicitor's office, accounts or records from the Commonwealth. [Source: Id. §1606(a)(8).]

(22) The closure of a licensee's office for a period in excess of 30 days, unless granted permission by the Insurance Commissioner to close the office for a longer period. [Source: Id. §1606(a)(9).]

(23) Violation of any provision of the Act, 63 P.S. §1601, et seq. or of these Regulations.

(24) Making a material misstatement in the application for any such license. [Source: §1606(a)(11).]

(25) The commission of fraudulent practices. [Source: §1606(a)(12).]

§115.6 Communications.

(a) The public adjuster shall promptly communicate to the insured any written offer of settlement made by or on behalf of an insurer within no more than 7 business days of receiving said offer. [Source: Connecticut

Regulations, §38a-769.5, "Settlement Offer". See also Pennsylvania Unfair Claims Settlement Practices Regulations, 31 Pa.Code §146.5 re obligations of insurers to acknowledge pertinent communications.]

(b) Public adjusters shall promptly act upon written and oral communications from insureds and insurers. An appropriate reply shall be made by a public adjuster within 10 business days of receiving an oral or written communication from an insurer which reasonably suggests that a response is expected. [See Pennsylvania Unfair Claims Settlement Practices Regulations, 31 Pa.Code §146.5 re corresponding obligations of insurers.]

(c) Public adjusters shall cooperate promptly with insurers in permitting and scheduling the inspection of any real or personal property involved in any claim or loss with which the adjuster is involved, and in no event shall such an inspection of property be delayed for a period of more than 72 hours after the public adjuster's receipt of a written request for said inspection, unless the insurer or its representatives asks otherwise.

(d) Neither the retention of a public adjuster, nor the foregoing provisions relating to the obligations of public adjusters with regard to communications shall prevent an insurer from directly communicating with its insured.

§115.7 File and Record Documentation.

The files of public adjusters and public adjuster solicitors shall be subject to examination by the Commissioner or by his appointed designees. The files shall contain notes and work papers pertaining to the claim in the detail that pertinent events and the dates of the events can be reconstructed. [Source: Pennsylvania Unfair Claims Settlement Practices Regulations, 31 Pa. Code §146.3 relating to corresponding obligations of insurers.]

§115.8 Other Remedies.

[Renumbering of former 31 Pa. Code §115.6.]

§115.9 Penalties.

[Renumbering of former 31 Pa. Code §115.7. Consider expansion or substantial revision. Statutory section referenced in present regulations appears to have been repealed.]

§115.10 Effective date of revision, filing and approval of existing contracts.

[To be determined.]

Original: 2246

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November 27, 2002

VIA HAND DELIVERY

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market St.
Harrisburg, PA 17101

**Re: Regulation #11-146
Public Adjuster Contracts and Licensing Requirements**

Dear Mr. Nyce:

I represent the Pennsylvania Association of Public Insurance Adjusters ("PAPIA"), who provided comments to the Pennsylvania Insurance Department ("Department" and "Agency") regarding Proposed Regulations at Regulation Number 11-146; Public Adjuster Contracts and Licensing Requirements, (31 Pa. Code Chapter 115). Chapter 115 was originally promulgated in 1980 under the prior public adjuster licensing statute (40 P.S. §§ 301-308), and is now being amended by the Insurance Department, "for consistency with the current statute and to more effectively regulate the licensing and conduct of public adjusters and public adjuster solicitors." (See Preamble to Regulations at Number 11-146). The current authorizing statute was enacted at 63 P.S. §§ 1601-1608 in 1983; almost twenty years ago.

On November 7, 2002, via e-mail, I received for the first time, the Final Form Regulations for Number 11-146. For the reasons set forth herein, the Final Form Regulations ("Regulations") should be disapproved.

Public insurance adjusters contact insurance companies on behalf of Pennsylvania consumers for the express purpose of obtaining payment of the consumer's insurance claims from these insurers. Public adjusters contract with the public, via an Agency approved contract and are bonded with a surety approved by the Insurance Commissioner. (See 63 P.S. §§ 1604, 1605). While licensing of the public adjusters has been met with general acceptance and cooperation by PAPIA, the Regulations, before you now for approval, are unsupported by the enabling statute and conflict with existing regulations. Furthermore, public adjusters are being unconstitutionally restricted by these

Regulations in their representation of insureds. Pennsylvania consumers should not be disadvantaged or limited in their pursuit of payment of an insurance claim by employing a public adjuster to evaluate their claims and obtain the full benefits due them under their insurance policies. These Regulations do just that.

The first area of concern to PAPIA are the time limits placed on notice to the insurer and on communications between public adjusters and insureds, found at § 115.9 (A), (B) & (C) of the Regulations, entitled *ADDITIONAL CONSUMER PROTECTIONS*. While it may appear that providing restrictive time frames in which to notify, communicate with, and respond to an insurance company on behalf of an insured, may enure to the benefit of the consumer, just the opposite is true. Ironically, the *Additional Consumer Protections* added to the Regulations at Section 115.9, do more to protect insurance companies in the claims process, than to protect consumers in their quest for payment of claims.

§ 115.9. ADDITIONAL CONSUMER PROTECTIONS.

A Public Adjuster Shall:

(A) Notify the insurer, within 5 business days of the execution date of the contract, of the public adjuster's representation to facilitate the processing of claims.

(B) Communicate in writing, to the insured, within 5 business days, all settlement offers from an insurer, so that the insured is made aware of all the options.

(C) Reply to written communications from an insurer, with respect to a claim, in writing within 5 business days, only if the communication from the insurer requires a response.

The five business days requirement to notify the insurer of the public adjuster's representation, found at Section A above, is in actuality, a one (1) day notice requirement. Since the Regulations have been amended at Section 115.2 to provide for a four business day right of cancellation of the public adjuster contract, the public adjuster has only one (1) business day to provide notice of its representation to the insurance company. This is not a consumer protection, rather a regulation which mandates an unreasonably short notice to the insurance company of the consumer's retention of a public adjuster.¹

¹Can we not foresee insurance companies refusing to communicate with public adjusters who have not provided notice of their representation in 5 business days, thus creating unnecessary confusion on the part of the insured who has hired the public adjuster to deal with the insurance company on their behalf and the insurance companies then claiming violations of the Public Adjuster Law and unfair insurance practices.

Section (B) eliminates the public adjuster's ability to continue to discuss differences in the valuation of the insurance claim between the insured's representative and the insurer representative. There would now be a requirement that settlement offers, whether correct, incorrect or inadequate, be transmitted within 5 business days to the insured. In some circumstances, certain carriers already send their proposals to the insured several days ahead of when they send a copy of the public adjuster. In other cases, carriers have been known to disavow oral offers made to the public adjuster, yet, these regulations do not require only written offers of settlement to be communicated in writing, rather, all offers of settlement. If the public adjuster communicates an oral offer to the insured, the offer is accepted and the insurer later claims that the offer was never made, who is responsible to the insured? This five day requirement is not a consumer protection, it is an unconstitutional restriction on the adjuster's ability to properly represent the consumer.

Under Section (C), written communications from insurance companies must be replied to by the public adjuster within 5 business days. This contrasts with the ten day time period given to an insurance company or its representative to respond to inquiries from the insured. (**See 31 Pa. Code Section 146.5, Unfair Claims Settlement Practices at 31 Pa. Code 146.1, promulgated pursuant to the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 -1171.15)**). Under the Unfair Insurance Practices Act, ten and fifteen days are the threshold time frames for insurers to respond to or acknowledge communications from insureds about their claims. See specifically **31 Pa. Code, § 146.5 below:**

§ 146.5. Failure to acknowledge pertinent communications.

(a) **Every insurer, upon receiving notification of a claim, shall, within 10-15 working days, acknowledge the receipt of the notice unless payment is made within the period of time. If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer, dating from the time the insurer receives notice.**

(b) **Every insurer, upon receipt of an inquiry from the Department respecting a claim shall, within 15 working days of receipt of the inquiry, furnish the Department with an adequate response to the inquiry.**

(c) **An appropriate reply shall be made within 10 working days on other pertinent communications from a claimant which reasonably suggest that a response is expected.**

(d) Every insurer, upon receiving notification of claim, shall provide within 10 working days necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with the policy conditions and reasonable requirements of the insurer. Compliance with this subsection within 10 working days of notification of a claim shall constitute compliance with subsection (a).

These tighter restrictions on public adjusters do not level the playing field in the interest of consumerism when responses and contacts to insurance carriers are required in less time than the insurer is given to respond to claims. Where is there a requirement that carriers have their representative at the loss site in a given time period with authority to settle a claim of the type involved, and not have multiple adjusters with different levels of authority play musical chairs with the insured? These are true consumer issues; untouched by these regulations.

Furthermore, the time restrictions set forth in (A), (B) and (C) of Section 115.9 adversely impacts on public adjusters as members of the small business community. Most small public adjustment firms cannot generally employ large, expansive staffs. Public adjusters who represent multiple clients in different claims simultaneously, but who are often required to travel in the conduct of their business, will be continuously placed in a tenuous position of adhering to unreasonable five day notice and communication requirements, or suffer the possibility of administrative penalties, including license revocation.

The “spin” on these regulations is to place onerous and unnecessary time requirements on public adjusters thereby interfering with their ability to assist insureds in the preparation and presentation of their insurance claims. By tying the hands of the public adjuster, the hands of the insured are tied.

The second issue to be addressed is Section 115.7 of the Regulations which expands the previous penalty section to incorporate penalties set forth in the Unfair Insurance Practices Act, 40 P.S. Sections 1171.1-1171.15. The penalties apply when the public adjuster, “demonstrates a pattern or practice of violating the regulations,” or “commits a single violation of the regulation that is so flagrant in nature as to warrant sanctions.”

Pennsylvania courts have reviewed and analyzed the applicability of the Unfair Insurance Practices Act (“UIPA”) as it relates to public adjusters and have determined that it does not govern public adjusters. Culbreth v. Lawrence J. Miller, Inc., 328 Pa. Super. 374, 477 A.2d 491, (1984)².

²In the 1984 case of Culbreth v. Lawrence J. Miller, Inc., *supra*, the Superior Court of Pennsylvania analyzed whether a public adjuster is subject to the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1, *et. seq.* (“UTPCPL”), or whether the public adjuster statute was the exclusive means of regulation of public adjusters in the Commonwealth. The Court concluded that the UTPCPL applied to public adjusters.

In Re Metro Transportation Co., et. al. v. Controlled Risk Services, 113 B. R. 874 (1990), the United States Bankruptcy Court for the Eastern District of Pennsylvania found that the term “adjuster,” found at 40 P.S. § 1171.4, means a person who represents an insurance company in settling a loss with an insured, and does not represent the insured. Public adjuster’s obligations are set forth in the Public Adjuster Law (63 P.S. §§ 1601 - 1608).

The business of a public adjuster representing the consumer is different from the claims processes described in the Unfair Claims Settlement Practices and Unfair Insurance Practices Act. Yet, under these Regulations, the public adjuster is subject to the penalty section of the Unfair Insurance Practices Act for violations of five day time restrictions which directly conflict with ten and fifteen day notice periods given to insurance companies and their representatives, under the same Act.

Notwithstanding this pronouncement by the Pennsylvania Superior Court to the contrary, the Regulations at Chapter 115.7, subject the public adjuster to the UIPA. While the Public Adjuster Law provides that it shall be construed as supplementary to all other acts dealing with the same subject matter (63 P. S. § 1608(c)), the regulation of insurance companies’ claims practices, as regulated by the UIPA and Unfair Claims Settlement regulations, is distinct from the licensing and regulation of bonded public insurance adjusters. The case law of this Commonwealth has made this distinction and the inclusion of the UIPA into the Regulations is beyond the statutory authority of the Public Adjuster Law at 63 P.S. §§1601-1608.

CONCLUSION

On its face, the final form regulations fail on two fronts. The restrictive time frames mandated for a public adjuster to conduct its business on behalf of the public is an unconstitutional restriction on trade which adversely affects the Pennsylvania consumer.

Second, the regulations subject public adjusters to the Unfair Insurance Practices Act in the face of Pennsylvania appellate law which states that a public adjuster is not an “adjuster” under the UIPA. Culbreth, supra.

Furthermore, in direct conflict with the regulations promulgated under the UIPA, the public adjuster is subject to the penalty sections of the UIPA, for violations of regulations under the Public Adjusters Law which are more restrictive than the notice requirements for insurance companies under the UIPA.

The Insurance Department cannot subject public adjusters to the UIPA when Pennsylvania courts have determined it does not apply. Section 115.7 of the regulations is without statutory authority and Section 115.9, entitled, “*ADDITIONAL CONSUMER PROTECTIONS*,” are unconstitutional restrictions on trade which cannot withstand constitutional scrutiny.

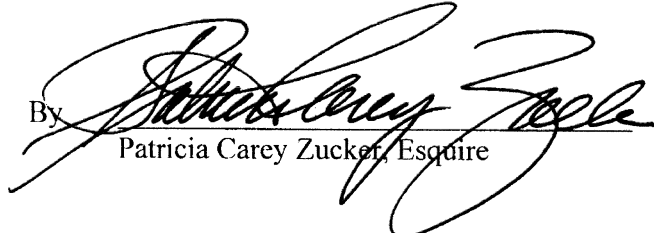
Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
November 26, 2002
Page 6

For these reasons, the regulations should be disapproved.

Respectfully yours,

**ELLIOTT REIHNER SIEDZIKOWSKI
EGAN & BALABAN**

By



Patricia Carey Zuckert, Esquire

cc: Alan Casper, Esquire, PA Assoc. of Public Insurance Adjusters, Exec. Director
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ORIGINAL: 2246

PAMIC

Pennsylvania Association of
Mutual Insurance Companies

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REVIEW COMMISSION

April 5, 2002

Timothy Knapp, Deputy Commissioner
Office of Policy, Enforcement & Administration
Commonwealth of Pennsylvania
Department of Insurance
1345 Strawberry Square
Harrisburg, PA 17120

RE: Public Adjuster Contracts and Licensing, 31 PA Code, Ch. 115

Dear Tim:

At our Department meeting with PAMIC elected officers, you mentioned our comments on the proposed public adjusters regulation. You stated it would be helpful if PAMIC could provide some examples of what our members considered abusive practices and unprofessional conduct by public adjusters.

Enclosed, please find a couple of dozen instances that appear abusive. I have several other stacks of documentation that I have not had time to sift through. I am also enclosing some advertising material that might be of interest.

I mentioned at our meeting that the advertising frequently mentions "licensed" and/or "bonded" by the PA Insurance Department. I have enclosed the flyer that makes reference to that. The advertising copy from the "Montgomery Post" dated February 7, 2001 is interesting for several reasons. The person submitting the copy to PAMIC found the legend: "Tried of Being Cheated by your Insurance Company?" provocative.

The copy on the left-hand panel refers to "mumbo jumbo fine print" in the policy wording. The ad copy mentions state licensure four times. The copy states that the adjusters use no "secret formula or magic," just "proprietary information" they learned from companies while working on their side. Several of the incidents involve acknowledged total losses where the insured receives less than policy held solely because of the intervention of a public adjuster.

I am in possession of another set of documents too lengthy to redact which appears to me to constitute practice of law by the adjuster. This volley of letters commences with a letter dated

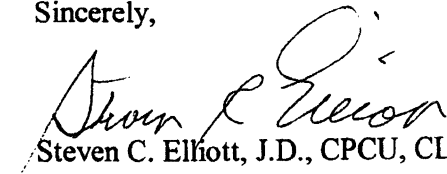
Pennsylvania Association of Mutual Insurance Companies

the day after the loss, with an authorization signed the date of the loss. Of course, that is something expressly forbidden by the statutes.

I think this material is fairly illustrative of what is going on in the field and demonstrates a compelling need for regulation in the public interest.

Tim, thank you for the interest you have displayed in this rulemaking and for suggesting I supply this material. As always, I will be happy to answer any questions you may have.

Sincerely,



Steven C. Elliott, J.D., CPCU, CLU
President

Enclosures

cc: P. Raub, PAMIC Chair
J. Bookhamer, PAMIC GA Chair
Robert Nyes, IRRC

sce/ak

Handwritten notes and signatures in the top left corner.

Vertical text on the left margin: 03-25-2002 MON 11:14 FAX 610 524 2413

Insurance Claim Consultants



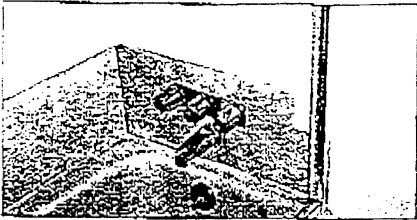
MISSING SHINGLES



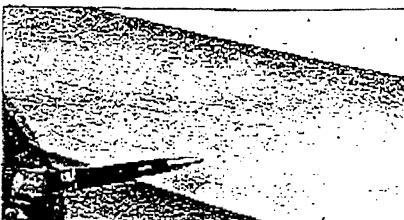
LEAKING



WATER DAMAGE



PLUMBING ACCESS DAMAGE



ARTILLERY SPORES



MELTED SIDING FROM BBQ GRILL

DO YOU REALLY KNOW WHAT IS COVERED BY YOUR HOMEOWNER'S POLICY?

There are several perils that are covered by your policy that are often overlooked:

- ◆ Wind Damage ◆ Roof Leaks ◆ Water Stains ◆ Ice Damming ◆ Broken Hot Water Heater ◆ Melted or Broken Siding ◆ Vandalism ◆ Fire, Smoke & Soot ◆ Accidental Damages Caused by Homeowner ◆ Cracked Tiles ◆ Plumbing Overflows ◆ Theft ◆ Power Surges ◆ Weight of Ice and Snow Freezing ◆ Artillery Spores – Brown Spots on Siding, Sidewalks, or Windows

MAXIMIZE YOUR SETTLEMENT

We represent the policy holder to receive the highest claim amount possible

If you're unsure whether you're covered or say to yourself "there's not much damage, I can live with it." Before living with the damage or paying for the repairs call:



METRO PUBLIC ADJUSTMENT, INC.

Call Metro
(800) 971-1997
24 Hours

FREE FREE

Home Inspection

Let us evaluate your damage and maximize your settlement.

Must be presented at time of estimate.

METRO PUBLIC

ADJUSTMENT,

800-971-1997

Licensed and bonded by the Insurance Department of Pennsylvania and New Jersey

At no cost to you we will—assess the damage and determine your coverage. Keep this with your homeowners policy for future use.

Professional Adjustment Working on your behalf

When you have a loss, the most important thing is timing. Your insurance policy stipulates in their mumbojumbo fine print that you have certain obligations and duties that must be exercised immediately in order not to jeopardize your claim. We assist in procuring temporary housing if necessary and any emergency repairs that must be made.

The following is a short list of possible claims: storm damage, missing roof shingles, interior water damage (stains), broken pipes, fire, smoke, hail, lightning, vandalism, burglary plus many others! Our experienced staff takes into account many factors including craftsmanship, quality, inflation, depreciation and prepare all estimates.

We prepare a clear and complete presentation from receipts to photographs and information. We will then meet with your insurance company and negotiate a settlement that is in your best interest, the maximum settlement on your behalf.

Professional Adjustment Corporation is a Pennsylvania corporation licensed by the state of Pennsylvania and New Jersey to adjust property losses. Just remember, we work for you, the homeowner and business owner. Our experience in the industry began almost 20 years ago. Previously state licensed insurance brokers, we have the training in coverage and information not available to the public. There is no secret formula or magic. We were trained by the insurance companies and given proprietary information.

As state licensed Public Adjusters, we are now prepared to share this information with you, so that you are paid fairly for your claim, not what the insurance company thinks is fair. Our services are available 24 hours, 7 days a week. Please don't delay. The absence of our professional experience could cost you thousands of dollars. Call today at 215-641-6000. Our tax-deductible fee is based on a percentage of the settlement. No settlement, no fee. There are no up front charges of any kind.

Once again that number is 215-641-6000.

Tired of Being Cheated by Your Insurance Company?

Let our expertise get you thousands of dollars more for your insurance claims.

No Strings Attached

No Catches

"If you don't get paid, we don't get paid."
20 years of experience and state license
Make the call you'll never regret!

215.641.6000

www.proadjust.com

Professional Adjustment Corporation



Possible claims include: storm damage, missing roof shingles, damage to carpeting or floor (stains), broken pipes, most interior water damage, fire, smoke, hail, lightning, vandalism, burglary, plus many others

Montgomery Post 2/7/01



RECEIVED MAR 27 2002

Steven C. Elliott
PAMIC
320W Market St.
602 Strawberry Square
Harrisburg, Pa. 17101

March 25, 2002

RE: Public Adjuster Regulation

Dear Mr. Elliott:

This correspondence is in response to your March 22, 2002 electronic mail alert. We have supplied copies of several examples of conduct we regularly see from public adjusters in our area. Per your request, I have blocked out the public adjusters name, and other policyholder information.

Examples attached include illustrations showing:

- Quoting Pennsylvania Court decisions and interpreting them as if they were attorneys.
- Putting a disclaimer on their estimates and trying to invoke a hold harmless agreement on their work product.
- Trying to collect their contract percentage of recovery on returned deductibles.
- Not providing a copy of the contract or Letter of Assignment when reporting a claim to the insurance carrier.
- Quoting selected portions of the Pennsylvania Unfair Claims Settlement Practices Act.

Page 2



I hope this information is helpful and useful in your communications with the Department of Insurance. If you have any questions, please contact me accordingly.

Sincerely,



February 20, 2002

Property Claims Department
[Redacted] Insurance Company
Philadelphia, PA 19106

by fax

Insured: [Redacted]
11000 Knights Road, Philadelphia, PA 19154
Policy Number: [Redacted]
Types of Loss: Water Windstorm
Dates of Loss: 12/18/01 11/25/01
Claim Numbers: to be assigned

Dear Property Claims Department:

Please note that [Redacted] Adjustment Corporation represents the insured for their loss in the above-captioned claims. Enclosed are copies of our authorizations. *Please direct all correspondence regarding the claims to our office.*

The coverage provided by your company is replacement value coverage. The principle set forth in the Fedas and Farber cases clearly shows that depreciation is not to be taken in a partial building loss. We will therefore be requesting the full replacement value of this loss at the time the claims are settled. Under the Court decision in Ferguson vs. Lakeland Mutual Insurance Company, it was ruled that a holdback of recoverable depreciation is unconscionable. If for any reason these claims are subject to a holdback of recoverable depreciation, your policy holder reserves the right to make claim for the holdback amounts as well as a claim for bad faith damages under 42:PA CSA 837.

Please contact Karen [Redacted] 215 [Redacted] to promptly schedule an appointment to inspect these losses.

Sincerely,
[Redacted] ADJUSTMENT CORPORATION
Notification Department/kd



We make things right.

enclosures
cc: [Redacted]

[Redacted] • Feasterville, PA 19053
Phone: (215) [Redacted] • Toll Free: (877) [Redacted] • Fax: (215) [Redacted] Email: [Redacted]

Public Adjustment, Inc.
One Greenwood Square,

PA 19020

(215)
(215) fax

09/10/97

Estimate:
Insured:
Address: 10 Nottingam Ct.
Fallsington, PA 19054

Adjuster: Michael
Phone:

Loss Location: Same

Date of Loss: 05/01/97

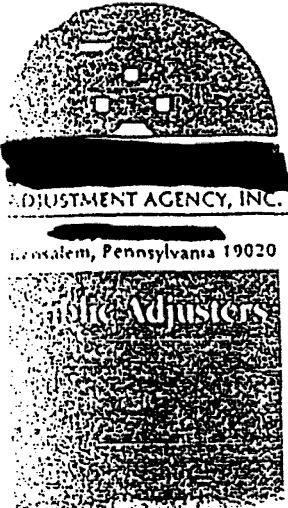
Computer Operator: MWW
Price List: PHILADEL

Date Entered: 09/10/97

Claim Number	Policy Number	Type of Loss	Deductible
	N/A	WIND	\$500

The following estimate is only an approximation of the damages suffered, or expenses incurred, by the insured. No warranty or representation with regard to the accuracy of the estimate is expressed or implied and none should be inferred. The actual damages suffered, or expenses incurred, could be higher or lower than the estimate, even significantly, depending upon variances in a number of factors affecting the estimate and the accuracy of the information and assumptions upon which the estimate is based. The estimate is based upon, among other things: information provided to us by the insured and others engaged by the insured; our own observations; measurements taken by our own representatives, the insured and others engaged by the insured; as well as assumptions made by us. Many factors may affect the amount of the estimate: including damages that were observed by us and included by us in the estimate where compensation has already been received by the insured for the damages, and with regard to which payment we were not informed; the costs of one contractor varying from another contractor as a result of a number of factors including, without limitation, the quality of work, the quality of materials or warranties provided by such contractors; damages not observed at the time of the estimate was rendered because of a lack of accessibility or weather; and other factors beyond our reasonable control. This estimate has been calculated for informational purposes only, and is based on our good faith belief as to the damages suffered or the expenses incurred as a result of the particular loss, and only represents one opinion as to the method of repair, restoration or replacement. Any reliance on the estimate is at your own risk and you agree to hold Public Adjustment, Inc., its representatives, employees, agents, officers and principles harmless in the event of such reliance.

(c)copyright 1996, Public Adjustment, Inc.



Representing You-The Home and Business Owner

(215) [redacted]
(Fax) [redacted]
(610) [redacted]
(717) [redacted]
(609) [redacted]
www.bllist.com

...osalem, Pennsylvania 19020

March 5, 1998

Mr. and Mrs. Joseph Schiavo
46 Norwich Drive
Sewell, NJ 08080

RE: Date of Loss: 1/27/96
Our File No.: 960918

Dear Mr. and Mrs. Schiavo:

We have been advised that [redacted] Mutual Insurance Company has released your deductible of \$200 to you regarding the above loss. As you know, this agency is due a fee of 25% of this money; accordingly, please mail us your payment of \$50.00 at your earliest convenience. A return envelope is enclosed for your convenience.

Thank you for your cooperation.

Very truly yours,

Janice McLaughlin

Janice McLaughlin
Settlement Coordinator

JMcL:kw

*Ray - Why am I getting this
2 years later?
Mrs. Schiavo
I don't owe them
anything.*

Why settle for less...Call [redacted] first!

[REDACTED] **ADJUSTMENT SERVICE, INC.**

P.O. Box 358, [REDACTED], PA 19064

Office No. (610) [REDACTED] Fax No. (610) [REDACTED]

FAX SHEET

DATE 4/16/01 FAX NO. 215 [REDACTED]

TO Claims Dept.

AT Phila. [REDACTED]

FROM [REDACTED] Adj.

THERE IS/ARE 2 PAGE(S) (INCLUDING SHEET) ATTACHED. IF
THERE IS A PROBLEM IN RECEIVING THIS FAX PLEASE CONTACT
Jackie

RE: RYOU
DOI, 4/11/01
POLICY NUMBER: [REDACTED]

ATTACHED PLEASE FIND NOTICE OF LOSS.

KINDLY REPORT AND CONTACT OUR OFFICE TO SCHEDULE AN
APPOINTMENT.

THANK YOU

NOTICE OF LOSS

FIRE, ALLIED LINES, HOMEOWNERS, OTHER MULTI-PERIL POLICIES
USE REVERSE SIDE FOR REPORTING LIABILITY CLAIMS

1. NAME OF COMPANY

2. AGENCY NAME, STREET ADDRESS

3. INSURED

Philip Ryou

4. PROPERTY ADDRESS

245 Sansom Street
Upper Darby, PA 19022

PHONE NO

PHONE NO

5. MAIL ADDRESS (IF DIFFERENT)

228 S. Spring Mill Road, Villanova, PA, 19085

6. LOSS LOCATION IF DIFFERENT THAN PROPERTY ADDRESS

7. POLICY PREFIX NUMBER

8. POLICY PERIOD (FROM, TO)

9. DATE OF LOSS

4/11/01

10. KIND OF LOSS (Fire, Wind, Exp, etc)

Fire/Smoke Damage

11. PROBABLE AMT ENTIRE LOSS

\$

12. PROB AMT LOSS THIS POLICY

\$

13. WAS CREDIT GIVEN FOR EXISTING INSURANCE?

YES NO

14. MORTGAGEE

FIRE, ALLIED LINES AND MULTI-PERIL POLICIES Complete below only item(s) involved in Loss as described by this Policy

Item No.	Amount Building	Amount Contents	Amount Other Items	Percent of Coins Applicable	Coverage and/or Description of Property Insured

15. SUBJECT TO FORM NUMBERS (INSERT FORM NUMBERS AND EDITION DATES)

Deductible Windstorm and Hail	Deductible Other Perils	Deductible Misc. (Explain)
\$	\$	\$

HOMEOWNERS POLICIES Complete below Coverages A, B, C, D and Additional Coverages, except liability

S E C I	COVERAGE A	COVERAGE B	COVERAGE C	COVERAGE D	\$	Describe Additional Coverages Provided
	Dwelling	Appurtenant Private Structures	Unscheduled Personal Property	Additional Living Expenses		
	\$ 00.00	\$	\$ 00.00	\$	\$	on
					\$	on
					\$	on
					\$	on

17. SUBJECT TO FORM NUMBERS (INSERT FORM NUMBERS AND EDITION DATES)

Deductible Windstorm and Hail	Deductible Other Perils	Deductible Misc. (Explain)	Percent of Coinsurance Applicable
\$	\$	\$	%

18. OTHER INSURANCE (LIST NAMES OF COMPANIES AND AMOUNT IN EACH)

19. REMARKS: Brief Description of Damage (if emergency handling required, explain why)

fire in kitchen.

20. COPIES SENT TO: Home or Dept. Office General Agent Fieldman Other

FOR CATASTROPHE LOSSES ONLY CATASTROPHE SERIAL NO. CAT 2-DIGIT NO.

NAME OF ADJUSTER TO WHOM COPY OF THIS NOTICE HAS BEEN FORWARDED

LEAVE SPACE BELOW FOR COMPANY USE ONLY

INSTRUCTIONS TO AGENTS: Insert amount of insurance in appropriate column to the left. Description of coverage may be abbreviated below, i.e., Additional Living Expense - A.L.E., In-Home Services and Installments - I.D., Umbrella's Risk - U.R., Time Element Coverages - T.E., Errors Omissions - E.O., Live Stock - L.S., Machinery Equipment - M.E., Furniture Fixtures - F.F., Stock - S.K., Yard Fixtures - Y.F. Do not commit the Company to any claim or line of action unless specifically instructed to do so. UNDER NO CIRCUMSTANCES MAKE ANY CHANGE OR ENTRY ON A POLICY AFTER A LOSS



ADJUSTMENT AGENCY, INC.

Pennsylvania 19020

Public Adjusters

Representing You-The Home and Business Owner

(215) [redacted]
(Fax) [redacted]
(610) [redacted]
(570) [redacted]
(609) [redacted]
www [redacted]

March 6, 2002

[redacted] INSURANCE COMPANY
Philadelphia, PA 19106

Attention: Claims Department

Reference: [redacted]
[redacted]
Holland, PA 18966-2139
Date of Loss: March 01, 2002
Type of Loss: WATER
Our File No.: 020183
Policy No.: [redacted]

Dear Sir or Madam:

Please be advised that the [redacted] Adjustment Agency, Inc. represents your policyholder in the above referenced claim. Enclosed please find a copy of our assignment. Please direct all correspondence regarding this claim to our office.

We would like to remind you of the regulations an insurance company must follow when handling first-party insurance claims in Pennsylvania:

- 1) An insurer is required to acknowledge receipt of notice of a claim within 10 working days. See 31 Pa. Code §146.5(a).
- 2) "Every insurer shall complete its investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within 30 days." If an insurer cannot complete its investigation within 30 days, "every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected." See 31 Pa. Code §146.6.
- 3) "Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer." See 31 Pa. Code §146.7(a)(1).
- 4) An insurer must respond to pertinent communications of its policyholder within 10 working days. See 31 Pa. Code §146.5(c).

At this time, we are requesting that you comply with the above regulations. Also, please immediately forward to us a complete copy of your insured's policy in effect on the date of this loss. Your policyholder cannot locate the entire policy.

Finally, kindly contact our office to schedule an inspection of the subject property.

We look forward to working with you to achieve a fair resolution of this claim.

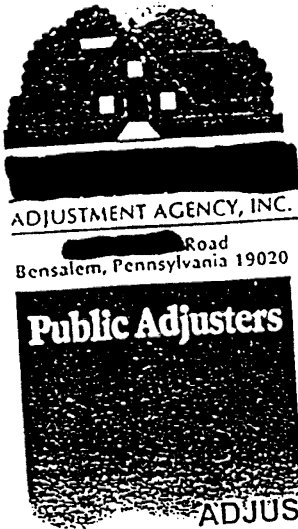
Very truly yours,

Patricia [redacted]
Claims Coordinator

PH/kjk

cc: [redacted]
[redacted]
Holland, PA 18966-2139

Why settle for less...Ca [redacted] first!



ADJUSTMENT AGENCY, INC.

_____ Road
Bensalem, Pennsylvania 19020

Public Adjusters

Representing You-The Home and Business Owner

(215) _____
(Fax) _____
(610) _____
(717) _____
(609) _____
www. _____ .com

ADJUSTER OF LOSSES FOR THE ASSURED
To the Insurance Companies

This is to certify that _____ Adjustment Agency, Inc., Public Adjusters, or their representative, is hereby retained to advise and assist in the adjustment of the insurance claim arising from loss by _____ Water

which occurred at 88 Woodlake Dr Holland Pa 18966
on or about the 1 day of March, 200d.

This will serve to notify my insurance carrier that I am assigning benefits under my insurance policy to my public adjuster, _____ Adjustment Agency, Inc., to the extent necessary to pay any fees for services rendered. My insurance company is instructed to place my public adjuster's name, _____ Adjustment Agency, Inc., on any settlement check or draft pertaining to this loss and transmit the check or draft to my public adjuster, _____ Adjustment Agency, Inc.

WITNESSED BY:

[Signature]
(Signature)

(Date)

INSURED:

[Signature]
(Signature)

(Address)



ADJUSTMENT SERVICE, INC.

Croydon, PA 19021
(215) [REDACTED]
(215) [REDACTED]
(609) [REDACTED]
Toll-Free [REDACTED]
Fax (215) [REDACTED]
www.[REDACTED].com

Fax to 215 [REDACTED]

Date: January 21, 2002

[REDACTED]
[REDACTED]

Philadelphia, PA 19106
Attention: Property Claims Supervisor

Reference: [REDACTED]
[REDACTED]
Philadelphia, PA 19114

Date of Loss: 11/25/01
Type of Loss: Water
Our File No.: [REDACTED]
Policy No.: [REDACTED]

Dear Sir or Madam:

Please be advised that [REDACTED] Adjustment Service, Inc. represents the insured with regard to the above captioned claim. Enclosed please find a copy of our assignment or representation.

PLEASE NOTE THE FOLLOWING:

Insurance Regulations – Pennsylvania 31 Pa.Code 115.4
"No insurance company, its employees, officers or agents or a public adjuster or any employee, officer or agent thereof, shall induce or attempt to induce any insured to cancel an existing contract with a public adjuster".

Insurance Regulations – New Jersey NJST 17:22B-13 Prohibited Acts
"No individual, firm, association or corporation licensed under this act shall:
c: induce cancellation of a duly executed written memorandum between an insured and a public adjuster".

At this time, we request that all correspondence and communications be made directly through our office at any of the phone numbers listed above. The insured should not be contacted by your company as we have been contracted to represent them.

At your earliest opportunity, kindly have your representative/adjuster contact our office to arrange a mutually convenient appointment to inspect the loss.

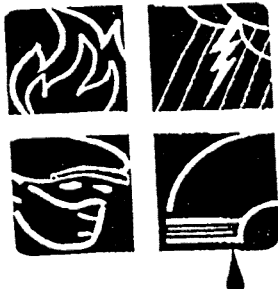
Your prompt attention to this matter is greatly appreciated.

Very truly yours,

[REDACTED] ADJUSTMENT SERVICE, INC.

cc:





ADJUSTMENT SERVICE, INC.

Croydon, PA 19021
(215) [REDACTED]
(215) [REDACTED]
(609) [REDACTED]
Toll-Free [REDACTED]
Fax (215) [REDACTED]
www.[REDACTED].com

This is to certify that [REDACTED] ADJUSTMENT SERVICE, INC. (Public Adjuster) or their representative(s), is hereby retained to advise and assist in the adjustment of the insurance claim arising from loss by WATER which occurred at: 3947 CONSTANCE RD PHILA Pa 19114 on or about the 25 day of NOV, 2001.

This will serve to notify my insurance company that I am assigning benefits under my insurance policy to my public adjuster to the extent necessary to pay any fees for services rendered. My insurance company is instructed to place my public adjuster's name on any and all settlement check(s) or draft(s) pertaining to this loss and transmit same to my public adjuster's office listed above.

WITNESSED BY:

(X) [Signature]
Date: 11/7/02

INSURED:

(X) [Signature]
(X) _____
Address: _____

**Insurance Regulations - Pennsylvania
31Pa. Code 115.4**

"No insurance company, its employees, officers or agents or a public adjuster or any employee, officer or agent thereof, shall induce or attempt to induce an insured to cancel an existing contract with a public adjuster"

**Insurance Regulations - New Jersey
NJ ST 17:22B-13 Prohibited acts**

No individual, firm, association or corporation licensed under this act shall:
c. Induce cancellation of a duly executed written memorandum between an insured and a public adjuster.





Alliance Adjustment Group

713 Hyde Park • Doylestown, Pennsylvania 18901
Phone: 267-880-3000 • Fax: 267-880-3003

December 14, 2001

Property Claims Department
[REDACTED]
[REDACTED]
[REDACTED]

Insured: [REDACTED]

Policy Number: [REDACTED]

Type of Loss: Fire

Date of Loss: 12/11/01

Claim Number: [REDACTED]

Dear Property Claims Department:

Please note that Alliance Adjustment Group, Inc. represents the insured for their loss in the above-captioned claim. Enclosed is a copy of our assignment. ***Please direct all correspondence regarding the claim to our office.***

The coverage provided by your company is replacement value coverage. The principle set forth in the Fedas and Farber cases clearly shows that depreciation is not to be taken in a partial building loss. We will, therefore, be requesting the full replacement value of this loss at the time the claim is settled. Under the Court decision in Ferguson vs. Lakeland Mutual Insurance Company, the Court has ruled that a hold-back of recoverable depreciation is unconscionable. If for any reason this claim is settled subject to a hold-back of recoverable depreciation, your policy holder reserves the right to make a claim for such hold-back as well as a claim for bad faith damages under 42:PA CSA 8371 since the Pennsylvania Superior Court has ruled that holdbacks are improper.

Please contact our office at 267-880-3000 to promptly schedule an appointment to inspect this loss.

Additionally, please provide us with a complete copy of the policy of insurance that was in effect at the time of loss, as well as any and all applicable endorsements or attachments.

Sincerely,

Alliance Adjustment Group, Inc.

Notification Department

cc: [REDACTED]
enclosures

Adjusters for the Assured

www.allianceadjustment.com

From:
To:
Sent:
Subject:

----- /

IN ANSWER TO YOUR REQUEST FOR INFO ON SUBJECT HERE ARE SOME PRACTICES WE HAVE ACTUALLY EXPERIENCED.

(1) PUBLIC ADJUSTER USES THE SAME CONTRACTOR AS HIS DAMAGE EXPERT ON ALL OF HIS LOSSES.

THIS IS COLLUSION AS CONTRACTOR WRITES THE DAMAGE THE WAY THE PA WANTS IT AND NOT HOW IT ACTUALLY IS.

(2) APPRAISAL PROCESS: PA TRIES TO STACK THE DECK AGAINST US.

USES SAME APPRAISER ON ALL APPRAISAL LOSSES & GETS AROUND IMPARTIAL REQUIREMENT BY

SAYING INSURED PICKED THE APPRAISER. (COLLUSION)

OBJECTS WHEN WE USE ANOTHER INDEPENDENT ADJUSTER WHO DOES SOME WORK FOR US OR

HAS DONE VERY LITTLE WORK FOR US (EVEN 1 CASE), EVEN THOUGH HIS APPRAISER IS USED OVER

& OVER

WE HAD AN ACTUAL CASE WHERE THEIR APPRAISER & OURS NEVER EVEN SPOKE, BEFORE

POLITICAL PA WENT TO THE RIGHT MOTIONS JUDGE (LUZERNE COUNTY) HE KNEW AND HAD HIS

FRIENDLY UMPIRE APPOINTED.

PA ACTS AS APPRAISER EVEN THOUGH HE ADJUSTING LOSS FOR INSURED. (WEARS 2 HATS)

PA USES ONE OF HIS OWN CONTRACTORS AS APPRAISER.

KNOWING THE APPRAISAL PROCESS IS MORE FRIENDLY TO INSURED THAN INS CO, PA INFLATES

LOSS KNOWING THAT WE MAY WANT TO SETTLE TO AVOID ADVERSE AWARD OR THE TENDENCY

FOR AN UMPIRE TO SPLIT THE LOSS IN HALF. (USE APPRAISAL PROCESS AS A HAMMER)

(3) USE OF RUNNERS TO SOLICIT BUSINESS FOR PUBLIC ADJUSTER (PHILA/NJ AREA) FOR FINDERS FEE.

(4) TELEPHONE SOLICITATION OF CLIENTS (TELEMARKETING)

(5) DOOR KNOB ADVERTISING / SOLICITATION. NEED MONEY ? FREE APPRAISALS GIVEN. WHEN PA DOES INSPECTION HE PRESENTS 2,3,4 SEPARATE CLAIMS TO US (WATER LOSS, FURNACE PUFFBACK & OTHERS)

(6) PA RETAINER NOTICE LETTER TO US WARNING THAT IT BAD FAITH TO TAKE

4/4/02

HOLDBACK ON LOSS & PAY ACV WHICH IS FALSE.

(7) PA TRIES TO STOP US FROM TALKING OR INTERVIEWING INSURED, TAKE RECORDED STATEMENTS, ETC WHICH IS UNAUTHORIZED PRACTICE OF LAW.

(8) PA IN BACK ROOM RECORDING CONVERSATION BETWEEN OUR ADJUSTER & INSURED (MT POCONO MOTEL).

(9) DISCARD DAMAGED PROPERTY BEFORE OUR ADJUSTER INSPECTS LOSS.

(10) VALUE OF DAMAGED PROPERTY OVERSTATED AS A RULE

(11) SAW PA MAKE CLAIM FOR EVERY STICK OF PERSONAL PROPERTY IN HOUSE EVEN THOUGH NOT DAMAGED.

(12) ONE PHILA AREA PA RESPONSIBLE FOR RECENT CLASS ACTION AGAINST A NUMBER OF CARRIERS IN PA REGARDING ACV/HOLDBACK ISSUE. WE HAD CASE THROWN OUT BECAUSE WE STOOD UP & FOUGHT THE SUIT (2K-4262)

(13) PA FAILS TO KEEP APPOINTMENTS & DELAYS CLAIMS HANDLING TO GAIN ADVANTAGE

(14) NUMEROUS LETTERS FROM LOCAL PA THREATENING BAD FAITH & ACTUALLY TRYING TO PRACTICE LAW

(13) BACK IN 1996 THERE WERE 3 PAS ARRESTED IN THE FAMOUS STING OPERATION LED BY ASST D.A. DAVID AUGENBRAUN OF THE PHILA DAS OFFICE.

RON SPAY USED STEEL WOOL ON PIPE TO MAKE IT LOOK LIKE RECENT REPAIRS WERE MADE TO CORRECT WATER LOSS. HE SPRAYED LIQUID ON WALLS TO MAKE IT LOOK LIKE WATER LOSS HAD OCCURRED.

THOMAS DALLMER INSPECTED A LOSS THAT WASN'T COVERED & TOLD INSURED WHAT POLICY THEY SHOULD HAVE. A FEW MONTHS LATER NEW CLAIM PRESENT UNDER NEW POLICY.

RUSSELL PAGANO CHANGED FACTS OF LOSS TO FIT THE COVERAGE & COLLECTED FROM INS CO.

WE HAD SAMPLES OF VARIOUS PIECES OF ADVERTISING & I KNOW I ROUTED THEM TO YOU. WE CAN'T SEEM TO LOCATE THEM NOW!

IN ANY EVENT I HOPE THIS INFO WILL BE OF SOME HELP. AS WE SPEAK OUR LOCAL NEMISES, HAS BEEN QUITE LATELY? I'LL PROBABLY REGRET THESE WORDS.

LET ME KNOW IF THIS IS WHAT YOU WANTED.

4/2/02

4/4/02

RECEIVED MAR 27 2002



March 26, 2002

STEVEN C ELLIOTT
PAMIC
320 W MARKET ST
602 STRAWBERRY SQUARE
HARRISBURG PA 17101

RE: Public Adjuster Regulation

Dear Steve:

I am enclosing information relating to what I considered an attempted fraud on the part of a public adjuster. In this case the insured was claiming windstorm damage to a small addition to the rear of their home. They presented us with an estimate for repair from a local contractor in the amount of \$3,356.54. Before an adjustment could be finalized they hired a public adjuster.

Even though the adjuster was aware of the estimate he prepared his own estimate for total replacement of the structure in the amount of \$13,654.54 and convinced the insured to sign a proof based on his figures.

The insured eventually hired an attorney and we ended up settling the claim for \$2,000.00. I tried to get the local district attorney to pursue the fraud but they declined.

Steve, I can't come up with another specific example at this time but I would add that I have never had a claim with a public adjuster wherein his initial estimate of damages was not inflated.

Lastly, if I may get on my soap box for a minute I would like to offer an observation. When a public adjuster is involved in a claim one of two things has to happen. One is that if the insured has enough money to make the repairs after the public adjuster takes his fee then the claim has

been overpaid. The only other scenario is if the amount paid reflects the actual cost of repairs then the insured will not have enough money to make the repairs after the public adjuster takes out his fee.

Sincerely,

General Contracting

Proposal No. **82**
 Sheet **1** of **1**
 Date **7/20/97**

COLUMBIA, PA.

NAME	
STREET	Walnut Street
CITY	Columbia
STATE	Pa. 17512
TELEPHONE NO.	FAX NO.

WORK PERFORMED AT:	SAME
STREET	
CITY	STATE
ARCHITECT	

HEREBY PROPOSE TO FURNISH WE ALL MATERIAL AND PERFORM ALL LABOR NECESSARY FOR COMPLETION OF :

Remove, repair and/or replace the following :

12 X 14 Roof, sheathing to salvage cover ----- saddle framing where necessary ----- replace aluminum siding (to old to match) -----
 Soffit, Facia, spout and gutter ---- Insulate ---- Re-drywall interior walls/ceiling ---- Paint ---- Underlay & V. Floor ---- Remove of all debris

Salvage cover \$138.00	Felt Paper \$16.00	Blind nail \$72.00	Misc.(nails, drip edge, roof caulk) \$30.00
Framing \$55.00	Sheathing \$56.00	White V. Siding and Accessories (3 Sq.) \$168.00	White Soffit and Facia \$32.00
Spouting and Guttering \$19.00	Fiberglass Ins. \$75.00	Drywall and accessories \$149.00	Paint \$70.00
Underlayment \$58.00	V. Flooring \$146.00	Debris removal \$215.00	
TOTAL MATERIAL \$1299.00 + Plus 6% Tax \$77.94 = (SubTotal) \$1376.94 + Labor for all \$1979.50			

ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED, AND THE ABOVE WORK TO BE PERFORMED IN ACCORDANCE WITH THE DRAWINGS AND SPECIFICATIONS SUBMITTED FOR ABOVE WORK AND COMPLETED IN A SUBSTANTIAL WORKMANLIKE MANNER FOR THE SUM OF

DOLLARS (\$ 3,366.54) Three Thousand, Three Hundred, Fifty Six -----54/00

WITH THE PAYMENTS TO BE MADE AS FOLLOWS: --- 1/3 at Start, Balance within 30 Days of completion ---

ANY ALTERATIONS OR DEVIATIONS FROM ABOVE SPECIFICATIONS INVOLVING EXTRA COSTS, WILL BE EXECUTED ONLY UPON WRITTEN ORDERS, AND WILL BECOME AN EXTRA CHARGE OVER AND ABOVE THIS ESTIMATE. ALL AGREEMENTS CONTINGENT UPON STRIKES, ACCIDENTS OR DELAYS BEYOND OUR CONTROL. OWNER TO CARRY FIRE, TORNADO AND OTHER NECESSARY INSURANCE FOR ABOVE WORK. WORKMAN COMPENSATION AND PUBLIC LIABILITY INSURANCE ON ABOVE WORK TO BE TAKEN OUT BY:

Respectfully submitted _____ Per _____

PLEASE NOTE---This proposal may be withdrawn by us if not accepted within - 20- days

ACCEPTANCE OF PROPOSAL

The above price, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined as above.

Accepted _____ Signature _____

Date _____ Signature _____

INSURED
CLAIM # :

PAGE # : 1
OUR FILE : 97-425LY

QUANTITY	DETAILED DESCRIPTION	RCV	DEP	ACV
AREA : LAUNDRY ROOM				
DIMENSIONS : 15' 9" x 10' 0" x 8' 0"				
FLOOR : 157.5 SF CEILING : 157.5 SF				
WALL : 412.0 SF BASE : 51.5 LF				
157.5 SF	R/R Floor Framing System @ 1.81	285.08	65.00	220.08
157.5 SF	R/R Subflooring @ 1.20	189.00	50.00	139.00
157.5 SF	R/R Carpeting @ 21.16	3336.60	110.00	3226.60
412.0 LF	R/R Wall Framing System @ 11.94	4919.28	100.00	4819.28
412.0 SF	R/R Wall Plaster @ 58.60	24143.20	100.00	24043.20
412.0 SF	Wallcovering @ 2.01	8281.20	80.00	8201.20
412.0 SF	Paint Walls @ 0.45	185.40	0.00	185.40
51.5 LF	R/R Base Moulding @ 1.60	82.40	0.00	82.40
51.5 LF	Paint / Finish Base Moulding @ 0.43	22.14	0.00	22.14
51.5 LF	R/R Trim Moulding @ 1.19	59.50	0.00	59.50
51.5 LF	Paint / Finish Trim Moulding @ 0.43	22.14	0.00	22.14
EA	R/R Cased Opening @ 74.93	74.93	0.00	74.93
EA	Paint / Finish Cased Opening @ 15.85	15.85	0.00	15.85
157.5 SF	R/R Ceiling Framing @ 2.16	340.20	100.00	240.20
157.5 SF	R/R Ceiling Plaster @ 58.60	9205.50	100.00	9105.50
157.5 SF	R/R Acoustical Ceiling @ 1.89	297.68	0.00	297.68
EA	R/R Solid Core Door @ 129.49	129.49	0.00	129.49
EA	Paint / Finish Solid Core Door @ 22.53	22.53	0.00	22.53
EA	R/R Hardware Item for Solid Core Door @ 59.31	59.31	0.00	59.31
EA	R/R Wood Window @ 332.20	332.20	0.00	332.20
EA	Paint / Finish Wood Window @ 24.72	24.72	0.00	24.72
EA	R/R Outlet @ 16.99	16.99	0.00	16.99
EA	R/R Light Switch @ 16.99	16.99	0.00	16.99
EA	R/R Light Fixture @ 74.92	74.92	0.00	74.92
412 SF	R/R Exterior Sheathing @ 1.10	453.20	135.00	318.20
412 SF	R/R Exterior Siding @ 1.96	807.52	242.00	565.52
81.0 LF	R/R Soffit @ 4.16	337.00	0.00	337.00
81.0 LF	R/R Fascia @ 1.69	136.80	0.00	136.80
28 LF	R/R Gutters @ 4.42	123.76	0.00	123.76
28 LF	R/R Downspout @ 3.40	95.20	0.00	95.20
157.5 SF	R/R Roof Decking @ 1.13	177.98	0.00	177.98
157.5 SF	R/R 90# Rolled Roofing @ 69.86	10995.75	64.00	10931.75
122.0 SF	Electrical-Per S.F. @ 3.87	4721.40	31.00	4690.40
122.0 SF	Plumbing-Per S.F. @ 4.32	5276.40	0.00	5276.40
EA	INS. RED LABOR Cover and Protect @ 10.00	250.00	0.00	250.00
EA	Minimum Charge Permit @ 121.36	121.36	0.00	121.36

9/23/97

TOTAL SUMMARY

INSURED FILE #	CLAIM # : 9700353
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Description	RCV	DEP	ACV
Repair Totals	11597.12	2862.12	8735.00
Contractor's Overhead	1158.71	286.21	872.50
Contractor's Profit	1158.71	286.21	872.50
GRAND TOTALS	13904.54	3434.54	10470.00
Deductible(s)	250.00		250.00
CLAIM PAYABLE(S)	13654.54		10220.00

I have reviewed this building estimate.
 The repairs and values assigned those
 repairs and all are correct to the best
 of my knowledge. Signed,

_____, Adjuster

9/23/97
 0/22/97

Incident #1

Company's adjuster had resolved all claim issues with insured, proof of loss assigned, and checks had been processed. Adjuster was delivering claim check to Insured when confronted by public adjuster with a signed "Public Adjuster Contract". The contract had been signed by one of the two insured. (Unmarried couple). The Company adjuster, after consulting with corporate counsel, proceeded to present the claim checks to the insured without the Public Adjuster's name on the check. The insured that signed the contract had been told by the Public Adjuster that his fee would not come from funds she was already receiving, but from any additional funds he would secure for her.

Public adjuster sued the Company, the Company adjuster and the Insured for interference with contractual relations. The second named insured had never signed the Public Adjuster contract. The case was dismissed by the Court.

Incident #2

See attached pages from an adjuster's reports dated 10/4/01 and 10/7/01. The Public Adjuster's name has been covered. The pages are self-explanatory.

Incident #3

Refer to by claim number 0002729 for future reference. Insured wife called crying indicating that claim check was not enough to reconstruct house damaged in fire. Public adjuster had received more than \$15,000.00 of their insurance proceeds. Claim was uncontested and a total loss and Insured would have received limits of policy despite involvement of public adjuster.

Incident #4

See attached Insurance Department Complaint 02-181-02238. The loss exceeded the limits and the insured would have received it all. Now the PA will take part of the Insured's proceeds.

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Incident #4

See attached Insurance Department Complaint 02-181-02238. The loss exceeded the limits and the insured would have received it all. Now the PA will take part of the Insured's proceeds.

Incident #5

to.

October 4, 2001

PUBLIC ADJUSTER

We received notification of his representing the insureds on September 20, 2001, which was two days after our inspection. He claimed I had contacted his clients after I knew they were represented, but this is not true. I did speak with [redacted] the morning of September 20, 2001 to further advance his claim. He mentioned nothing of being represented by the public adjuster. Shortly thereafter I received the letter by fax, with no contract attached. I contacted [redacted] to confirm they were represented at which point the conversation ended.

On Friday, September 28, 2001 a rather hostile [redacted] called me screaming something about this claim that honestly is not worth repeating. We were able to schedule our next meeting on October 3, 2001.

Upon my scheduled arrival on October 3, 2001 I was greeted by Mr. [redacted]. His pushy attitude and abundant use of profanity was mixed with his outrageous claims that I was personally involved in lawsuits brought by him. I asked him to stick to the matter at hand since there was no point in arguing with him on topics that had nothing to do with this loss.

He was not at all amused by my demand that his clients be interviewed separately and really become upset when I used the word sequestered, the definition of which I had to explain to him. We finally reached an agreement that this was going to take place.

Afterwards, I was handed the personal property inventory. Mr. [redacted] was instructing his clients not to cooperate with me and that their obligation was to allow me to sift through the remains if I wanted to, but they had to offer no assistance.

On no less than ten occasions we discussed the intent of the cooperation clause and also, the misrepresentation, concealment and fraud clause. Although the insureds found his uncontrollable behavior amusing, they decided to help with identifying the remains.

At that point I explained that the information I had gathered at the time of this 3 1/2 hour meeting would be submitted to you at which time further instructions would be received. I was instructing them not to dispose of the personal property item remains until this portion of the claim had been resolved and accepted by the company.

Specifically, the spoiled and rotten food items that were stored in the refrigerator and chest freezer were addressed at the time of our original meeting, during the phone conversation with Mr. [redacted] on September 28, 2001 and again at this interview.

October 7, 2001

WITNESSES

The previous owner of the vehicle is Rodney Kline. Although Mr. Miller says he intended to use this vehicle off road, it is quite possible he was repairing this for Rodney Kline. We may want to speak to him about this and get his statement of fact.

The brother-in-law, Tim Long, would be a good before the fact witness. He would also be able to produce some information on his ATV. I believe it would be beneficial to get his statement.

Although Garth Miller is Michael's uncle, he was also his supervisor. We may want to speak with him to see if any of the tools Mr. Miller lost in the fire were originally purchased as work tools.

The fire department usually takes great care when entering a residence that is not involved in a fire and the thoughts they would intentionally track debris onto the carpets does not seem consistent, especially in view of the insured's claim there was no interior damage during our first interview. Also, they claim a health hazard now exists during our second interview. I am also curious as to what the insured may have relayed to the fire chief.

REMARKS

It is evident the public adjuster has severely influenced the insureds. There is a certain level of control that I am expected to maintain when negotiating a settlement with the policyholders. Mr. [redacted] is busy undermining this effort.

He has also failed to act in any form of a professional at the time of our meetings. I believe this could be witnessed by his free use of profanities as I was getting into my vehicle and how he was chasing me on foot as I was driving away.

Mr. [redacted] seems to encourage the insureds to offer no cooperation. I have been offered no receipts or verification of ownership unless it serves Mr. [redacted]'s purpose to do so. To date, the two photographs, which are enclosed, are all that I have received other than his itemized list. The photos show the Christmas yard decorations and a glimpse of the work bench area. It also shows me the construction technique of the garage.



INSURANCE DEPARTMENT
BUREAU OF CONSUMER SERVICE
1321 Strawberry Square
Harrisburg, PA 17120
Consumer Hotline: 1-877-881-6388
Website: www.insurance.state.pa.us

U.S. 00177
Phone (717) 787-2317
Fax (717) 787-8585

March 19, 2002

RE: File Number: 02-181-02238
Insured: Verne Cooper

Dear Sir or Madam:

We are in a receipt of a complaint (copy enclosed) from the above-captioned insured.

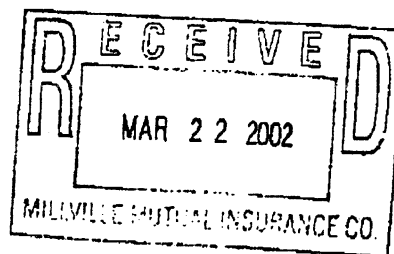
Please review your file and address all the insured's concerns. Your response should include the company's reason for its action and any additional pertinent information that may be involved. **Please be reminded that pursuant to 31 Pa. Code Ch.146.5 (b), companies are required to respond to the Insurance Department within fifteen (15) working days of receipt of such inquiry.**

Your cooperation in this matter will be appreciated.

Sincerely yours,

Consumer Service Investigator

cc: File



FAX TRANSMITTAL SHEET

DATE: 3/22/02

TO: _____

FROM: _____

NUMBER OF PAGES INCLUDING COVER SHEET: 4

Example per your request of
3/22/02.

ps.

Insurance Department refused
to get involved on this one!

IMPORTANT NOTICE

THIS TRANSMISSION IS INTENDED ONLY FOR THE ADDRESSES NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL OR OTHERWISE PROTECTED FROM DISCLOSURE TO ANYONE ELSE. ANY REVIEW, DISSEMINATION OR USE OF THIS TRANSMISSION OR CONTENTS BY PERSONS OTHER THAN THE ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE TELEPHONE US IMMEDIATELY AT (610) 434-5179 AND RETURN THE ORIGINAL TO US BY MAIL AT THE ADDRESS STATED ABOVE.

IF THERE ARE ANY PROBLEMS IN THE TRANSMITTING OF THIS DOCUMENT, PLEASE DO NOT HESITATE TO CALL THIS OFFICE. THANK YOU

To: PA Insurance Department
 From: _____
 Re: Previously E-mailed File
 Date: 11/26/01

The _____ Insurance Company _____ insures Gary & Linda _____ for \$25,000. Tenant homeowner's policy. The _____ are husband, wife and 3 children. The morning of 10/5/01 a fire destroyed their apartment as well as all their contents. They called our office and our adjuster met them at the apartment and gave them a check for \$2,500.00 as an advance toward their contents. Monday morning, 10/8/01, Mrs I _____ picked up a check for an additional \$2,500.00 as an additional advance payment. The afternoon of 10/8/01 we received a fax from _____ public adjustors informing this Company that they were representing our insured in the handling of their claim. I was dumbfounded!!! Why would an insured sign a contract for a fee after his Company has bent over backwards to assist in the handling of the claim? Especially since all of the parties realized that the claim was a total policy limit claim. What would the public adjustor need to say to my insured to make him decide to transfer his recovery of policy limits for a contingency fee??? Obviously as you continue to review this file, I believe you will understand the motivation for my frustration. I can only surmise that promises made by a public adjustor for more coverage than what already exists in the policy (is that fraud?) or outlandish lies and misrepresentations about the actions of ones insurance carrier (that has to be fraud) to warrant an insured to sign that contract.

I implore you to investigate this miscarriage of justice.

I await your response,

LAW OFFICES

TEL (610) :

FAX (610) :

October 26, 2001

President
The [redacted] Inc.
[redacted]
[redacted] PA 19044

RE: [redacted], GARY & LINDA

Dear Mr. [redacted]:

Please be advised that this office represents Gary and Linda [redacted] of Bethlehem, Pennsylvania in connection with the losses they suffered in a fire at their residence located at [redacted] Bethlehem, Pennsylvania, on October 4, 2001. It is my understanding that on October 25, 2001 you obtained a check from Mutual Insurance of Lehigh County made payable to Mr. and Mrs. [redacted] and your company in the amount of \$21,250 and a second check made payable to the same three parties in the amount of \$3,272.42. The larger check, while not endorsed by your company, was given to Mr. and Mrs. [redacted], but they were later asked to retrieve it from the bank where it was deposited. Please be advised that check has been deposited and will not be retrieved.

It is my further understanding that on October 25, 2001 you required Mr. and Mrs. [redacted] to sign a handwritten statement indicating that they would not retain legal counsel, or that they waived their right to review any documents with legal counsel. This letter will serve as formal notice to you that any and all documents signed by Mr. and Mrs. [redacted] on October 25, 2001 and everything else they signed with your company back to October 6, 2001 is hereby rescinded. My understanding of your actions in this matter, including but not limited to your repeated failure and refusal to return telephone calls, your misrepresentations regarding the insurance carrier and its claims service, your misrepresentation regarding the availability of legal counsel, and your failure to provide Mr. and Mrs. [redacted] with copies of documents they signed, lead me to believe that there may have been serious violations of Pennsylvania law on your part.

Any and all documents, photographs, appraisals, estimates or other items developed on behalf of Mr. and Mrs. . . . I should be delivered to this office immediately.

Any further communication with Mr. and Mrs. . . . should come to this office, and any disputes regarding your conduct in this matter will be resolved in Court and before the Insurance Commissioner.

Yours very truly,

KJK/bmh
Copy to Mr. and Mrs. Gary . . .

VIA FAX TO (610)

and U.S. MAIL POSTAGE PREPAID

Fax Memo from :

March 25, 2002

Pages Including Cover: 4

To: Steven C. Elliot, President
Company: PAMIC
Fax: (717) 233-7365
Re: Public Adjusters Regulation

As an independent property loss adjuster handling claims in the Philadelphia region for the past 26 years, dealing with public adjusters is an everyday occurrence. Settling claims for \$2,500 where the public adjuster presents estimates in excess of \$25,000.00 is commonplace. My thinking is that the loss speaks for itself and this exaggeration would seemingly only succeed if the company representative handling the loss were without experience or training.

What I do find distressing are the practices of public adjusting solicitors who find or create a loss. For example, the solicited insured is told there is smoke damage as a result of a fire several doors away. A chemical sponge is used to demonstrate the existence of smoke on walls in the kitchen where cooking occurs and in the basement where the furnace is located. Smoke to some degree exists in these areas in practically every home. Prior to this revelation, the insured had no intention of filing a claim. Another example is finding water damage from an old leak and making it a new claim. The loss may not have occurred within the policy period of the current insurer. I have attached two advertisements referencing this practice. One never asks when the damage occurred.

Referral fees or kickbacks to roofers, plumbers, HVAC contractors are used to obtain work. This practice should be made illegal.

Finally, I attached a letter of representation from a public adjuster interpreting case law and threatening a claim for bad faith damages if this interpretation is not accepted.



81

P

March 18, 2002

RECEIVED

MAR 19 2002

Pennsylvania Insurance Department
Property Insurance Complaint Department
Room 1321 Strawberry Square BLDG. 1
Harrisburg, PA 17120

Insured: _____
Insurer: _____
Claims Representative: _____ Adjustment Service, I

To whom it may concern:

I, along with my client Ms. Verne _____ would like to file a formal complaint against _____ Adjustment Service and _____ Company for their intentional interference with my Public Adjuster contract with the Insured.

Since the Insured enlisted my services, I have requested that the assigned adjuster meet with me at the loss location and review the deficiencies in the estimates he used to attempt settlement. Aware that the offered settlement was less than what she should receive, the Insured hired _____ Public Adjustment. The assigned adjuster refused multiple requests by _____ / Public Adjustment to re-inspect the damages. _____ Adjustment Service refused and I subsequently secured a contractor to estimate the structural damages for the Insured.

To support my claim of intentional interference with my contract and to assist you in your investigation I provide you with the following:

- A copy of the Public Adjuster contract between the Insured and (_____ Public Adjustment, P.C. My corporate license is _____. My individual license is _____.
- A copy of the Insured's policy declarations page along with a copy of the front of the Insured's actual policy. The Insured's policy limit is for \$40,000.00 on the Structure.

We work for you on property insurance losses.

- Copies of all communications between the assigned independent adjuster Mr. [redacted] from [redacted] Adjustment Service and myself.
- A copy of the contractor's [redacted] estimate of damages exceeded \$50,000.00 and did not include the basement area where the fire originated. A Copy of the estimate from [redacted] is included. Inc. did not estimate the basement damage where the fire originated. However, their estimate exceeded the amount of coverage available by \$10,000.00 without inclusion of the origin of the fire.
- The originals of Adjuster [redacted]; most recent communications to the Insured and myself. Please note that at the bottom of the page on the letter addressed to [redacted] Public Adjustment the adjuster has placed a Pennsylvania Fraud Notice and actually circled words in the paragraph. I request that the original of Mr. [redacted]; letter to [redacted] Public Adjustment dated March 15, 2002 be returned for my records.
- I [redacted] March 15th letters are deliberately misleading. In the first paragraph of the letter sent to [redacted] Public Adjustment, but copied to the Insured, Mr. [redacted] states that Mr. [redacted] indicates he did not give an accurate description and estimate and that Mr. [redacted] believes his estimate was not fair. That is hardly the case. Mr. [redacted] estimate was in excess of the policy limits without even including the damage to the basement of the property.
- Despite the Insured's engagement of the Public Adjuster contract and her request that all communication be directed to [redacted] Public Adjustment Adjustment Service continues to communicate with the Insured. [redacted] letter to the Insured is threatening and meant to destroy the confidence placed in [redacted] Public Adjustment.

The actions of [redacted] Insurance and their independent adjuster staff towards [redacted] Public Adjustment and my clients is a deliberate attempt to interfere with the existing Public Adjuster contract. On another claim involving [redacted] I have been forced to file litigation for [redacted] refusal to acknowledge my public adjuster contract. Each time I have a claim with [redacted] the insurer it seems that their assigned claims representatives refuse to discuss or negotiate the claim and force the Insured to demand Appraisal to see their loss fairly resolved. This creates additional costs and delays in settlement to the Insured and [redacted] Public Adjustment.

Once you have reviewed the enclosed information, I ask that you please contact me to discuss this matter. Thank you for your anticipated assistance in this matter.



We work for you on property insurance losses.

Sincerely

Cc: Ms. Verne



We work for you on property insurance losses.

ORIGINAL: 2246

LAW OFFICES
ELLIOTT REIHNER SIEDZIKOWSKI EGAN & BALABAN

400 SPRUCE STREET
SCRANTON, PA 18503
570-346-7569

GOVERNORS' ROW
27 NORTH FRONT STREET
P.O. BOX 1284
HARRISBURG, PENNSYLVANIA 17108-1284

P.O. Box 3010
925 HARVEST DRIVE
BLUE BELL, PA 19422
215-977-1000

PHONE ♦ 717-234-3282
FAX ♦ 717-233-4264

PATRICIA CAREY ZUCKER
PCZ@ERSE.COM

April 1, 2002

VIA HAND DELIVERY

Richard M. Sandusky, Deputy Director for
Regulatory Analysis
Kimberly deBien, Regulatory Analyst
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

RECEIVED
2002 APR -1 PM 4: 10
INDEPENDENT REGULATORY
REVIEW COMMISSION

**Re: Proposed Rulemaking
Pennsylvania Insurance Department, 31 Pa. Code, Chapter 115
Public Adjuster Contracts and Licensing
Fiscal Note #11-146**

Dear Mr. Sandusky and Ms. deBien:

Please be advised that I represent the Pennsylvania Association of Public Insurance Adjusters ("PAPIA"), with regard to the above-referenced Proposed Rulemaking for the Public Adjuster Contracts and Licensing in the Commonwealth of Pennsylvania. As you know, PAPIA is interested in the Proposed Rulemaking that has been issued by the Pennsylvania Insurance Department with regard to Public Adjuster Contracts and Licensing requirements and, in fact, met with Peter Salvatore, Director, Special Projects; Jack Yanosky, Director, Bureau of Producer Services, and Amy Daubert, Department Counsel, at the Pennsylvania Insurance Department on Friday, March 29, 2002 to discuss same.

The meeting with the Department concentrated on the issue of the consideration provision in the Public Adjuster's Contract as it has been proposed by the new Regulations. Specifically, 31 Pa. Code § 115.2(a)(4) is proposed to read as follows:

The consideration [,] expressed as a percentage of any payments to be received on the negotiated claim, and as a maximum dollar amount.

31 Pa. Code § 115.2(a)(4)

Kimberly deBien
Richard M. Sandusky
Independent Regulatory Review Commission
April 1, 2002
Page 2

In the past, the Public Adjuster Contracts have contained maximum percentages, “not to exceed” the total payment received on the negotiated claim.¹ The Proposed Regulation change would require that both a percentage, as well as a maximum dollar amount, be incorporated into the Public Adjuster’s Contract. This request for a maximum dollar amount in many cases is extremely difficult, if not impossible, for an adjuster to anticipate. The proposed addition to the Regulation requesting a maximum dollar amount would not realistically give any additional information to the consumer for purposes of them deciding whether or not to enter into the Public Adjuster’s Contract and in many cases may, in fact, limit the insured in terms of the amount of recovery they can receive in the event the maximum dollar amount goes beyond that anticipated by the adjuster. In that case, a new contract or an amendment to a contract would be necessary.

PAPIA would recommend that in place of having both a maximum dollar amount and a percentage of the total claim, that the Regulation be set forth as follows:

The consideration expressed as a percentage of any payments to be received on the negotiated claim, **or** as a maximum dollar amount.

With the change of this one word from “and” to “or,” the adjuster is given the ability to set forth, with as much certainty as possible, the consideration for the claim being adjusted. The consumer is also advised, as near as possible, of the adjuster’s fee.

In meeting with the Insurance Department, it appeared that the Department understood the difficulty of consistently putting a correct maximum dollar amount into the contract, and it is believed that the Department would be in agreement with having an **and/or** provision in that section of 31 Pa. Code § 115.2(a)(4).

By way of further information, Jack Yanosky, Director, Bureau of Producer Services for the Insurance Department, also suggested that once a public adjuster obtains the statutorily required approval from the Insurance Department on its Public Adjuster Contract, that the Public Adjuster provide an attestation in their license renewal application, that there are no changes to the contract as it has been previously approved by the Department. This would alleviate the need to send in another copy of a contract for the Department’s approval, when the contract has been previously approved. It was also recommended that an attestation be provided by the Adjuster, that the bond,

¹The enabling statute, (63 P.S. §§ 1601-1608), and the Proposed Regulations do not address a maximum amount for the public adjuster’s fee. The Insurance Department has generally interpreted that the adjuster’s fee should not exceed fifty (50%) percent of the negotiated settlement, however, adjuster’s fees set at less than fifty (50 %) percent are being approved by the Department for use in Pennsylvania.

Kimberly deBien
Richard M. Sandusky
Independent Regulatory Review Commission
April 1, 2002
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that is statutorily required to be put in place by the Public Adjuster, remains in place, without change from that previously approved by the Department. Again, this precludes the need for an additional copy of a previously approved bond to be provided to the Department. The Department could monitor the truthfulness of these attestments by the Public Adjusters through the licensing regulations. It is suggested that a new subsection could be added to the licensing process proposed at 31 Pa. Code §§ 115.11 through 115.22, to include the attesting to the contract and the bond.

Finally, the proposed revision made to the existing regulations at 31 Pa. Code 115.2 (a) (7), eliminates the redundant reference to cancellation of the contract and provides a clear, "Notice of Right to Cancel" on the front page of the Public Adjuster's Contract, followed by the specific terms and conditions for cancellation. PAPIA is in favor of this change.

With these changes as set forth above, PAPIA would endorse the Proposed Rulemaking of the Insurance Department.

To the extent you have any questions with regard to our comments, do not hesitate to contact me directly. I am copying these comments to Peter J. Salvatore, Director, Special Projects, at the Insurance Department as well as to Amy Daubert, Department Counsel and Jack Yanosky, Director, Bureau of Producer Services, who were also present at the meeting.

Thank you for your attention and consideration in this matter.

Respectfully yours,

**ELLIOTT REIHNER SIEDZIKOWSKI
EGAN & BALABAN**

By:


Patricia Carey Zueker

cc: Peter J. Salvatore, Director, Special Projects
Amy Daubert, Department Counsel
Jack Yanosky, Director, Bureau of Producer Services
Pennsylvania Insurance Department
Scott E. Seeherman, President
PA Association of Public Insurance Adjusters
Gene Venno, Executive Director
Pennsylvania Chiropractic Association



ORIGINAL: 2246

PAMIC

Pennsylvania Association of
Mutual Insurance Companies

Steven C. Elliott
President

February 22, 2002

Peter J. Salvatore
Regulatory Coordinator
Commonwealth of Pennsylvania
Department of Insurance
1326 Strawberry Square
Harrisburg, PA 17120

RE: Public Adjuster Contracts and Licensing, 31 PA Code, Ch. 115

Dear Mr. Salvatore:

I am President of the Pennsylvania Association of Mutual Insurance Companies (PAMIC). PAMIC's membership includes 84 mutual property/casualty insurance companies. The purpose of this letter is to offer comments and suggestions for improvement to the Insurance Department's proposed regulation on public adjusters as published in the February 2, 2002, Pennsylvania Bulletin. As always, thank you for the attention you and the Department always accords our membership's concerns.

The proposed regulation, as published, contains several positive features. We note the modification of the contract cancellation features to conform to the four-day requirement of the new statute. We understand the Department's stated preference for avoiding repetition of the statute. But we are significantly pleased with the statutory limitation on solicitation in the 24 hours following a fire or other occurrence. People frequently turn to one source as a convenient compilation of their obligations and inclusion of this important prohibition in the body of the regulation can only increase compliance.

The proposed regulation also states that the public adjuster contract may not contain any term allowing the adjuster's fee to be collected when the amount due from the insurer has not been paid or allowing the entire fee rather than a percentage to be collected from the first check. Proposed Reg. Sec. 115.2. (b) (1). The next subsection prohibits contract terms that would require the insurer to issue a check in the name of the public adjuster only. These are valuable features of the new regulation and are obviously important consumer protections.

PAMIC believes these consumer protections may be more adequately safeguarded by the following modifications. Proposed Reg. Sec. 115.2.(b) (2) should be read that the public

Pennsylvania Association of Mutual Insurance Companies

adjuster contract must affirmatively state that the insurance company check may not be issued only in the name of the public adjuster. The Department would be hampered in enforcing the requirements of subsection (1) if checks were issued solely to the public adjuster. As the subsection reads now, it only forbids contractual language "requiring" such issuance, leaving open the possibility of offering this as a "service" to the insured and securing "voluntary" authorizations of such check issuance.

Proposed Reg. Sec. 115.2 could be further enhanced by a mandatory contractual provision stating that nothing in the contract will prohibit the insurer from contacting its policyholder in the normal claims adjustment process. Insurance companies have independent contractual and regulatory obligations that should not be hampered by attempts to curtail normal and necessary communication between the parties to the policy.

PAMIC strongly maintains that the public adjuster contract should be required to contain the insurance fraud notice language required by Pennsylvania's insurance fraud statute, 18 P. S. Sec. 4117(a)(3). This language notifies users of the fact that any person who knowingly and with the intent to defraud any insurer, makes a false, incomplete or misleading claim commits insurance fraud. The appropriate language is set out at Sec. 115.2. (8) of the PAMIC proposed regulations enclosed with this letter as an exhibit. The Department has exercised diligence in making sure that this important language is included in all claims related documents and omission of it here would be a glaring gap in the circle of consumer protection.

Proposed Sec. 115.3, Additional Procedures, would be vastly improved by addition of a subsection requiring that a copy of the public adjuster contract be supplied to the insurer at the inception of the adjustment process. Typically, the notice an insurer receives from the public adjuster contains a recital that the policyholder has assigned at least part of the expected performance under the contract of insurance (payment of loss) to a third party (the public adjuster). This is the assignment of a right to a contractual performance as to which significant consumer protections attach under the Unfair Insurance Practices Act. Moreover, public adjusters routinely request full copies of the policy or policies of insurance that might respond to the claim. There should be bilateral disclosure by both parties, policy to the public adjuster, public adjuster contract to the insurer.

Proposed Sec. 115.3(a)(1) contains a provision that the public adjuster must "verbally" inform the consumer of his or her rights to cancellation. The previous regulation, in making this requirement, used the word "orally." In the past, the word "verbal" meant using words, as distinguished from using gestures or pictures, for example. The word "oral" meant "spoken," the opposite of "written." The American Heritage Dictionary still gives that primary meaning to "oral." It shows six definitions for "verbal," the third of which is "Expressed or transmitted in speech; unwritten." The first two definitions refer to pertaining to the use of words, concerned with words rather than the facts they represent, consisting of words alone without action. If the Department means to change the requirement so that, say, a separate written notice could be handed the consumer at the time of contracting, PAMIC considers this a weakening of the protective action

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mandated by the former regulation. In its place is a redundant piece of paper merely reiterating what is in the contract itself. If the two words are considered synonymous, there is a possibility of misinterpretation. The American Heritage Dictionary, in its usage guide under the entry "verbal," states that the word "when applied to such words as *agreement, promise, commitment, or understanding* is well established in the sense of *oral*. But anyone who fears misunderstanding may use *oral* instead." I raise this as a fear of misunderstanding, especially where a term is being changed from the less ambiguous word.

The proposed regulation lacks specific provisions and procedures for revocation or suspension of a license or for imposition of fines. In fact, there is no mention of revocation except in passing at Proposed Reg. Sec. 115.19(e) and (f), and 115.20 (2). Instead, the proposed regulation incorporates by reference the statutory grounds for revocation in the provisions dealing with new and renewal license applications. The omission of specific regulatory guidance as to what acts fall within the prohibited activity and as to the procedures to be followed in a revocation proceeding could lead regulated professionals to make the unwarranted assumption that no significant ongoing regulatory supervision may be expected.

In that regard, PAMIC believes the legislature has contemplated rulemaking defining prohibited activity beyond the bare words of the statute. The following language indicates a legislative intent that the Department define acts that can result in adverse regulatory action regarding licensing. 63 P. S. Sec 1608(a) prescribes that the Department are "charged with the administration and enforcement of this act and shall prescribe, publish, adopt and promulgate rules and regulations in connection therewith." And the statute further lists, at Sec. 1606(13), "incompetency or untrustworthiness to transact the business of a public adjuster." This language cries out for enumeration of specific acts. There is a legislative intent for the Commissioner to define such behavior by rule. Likewise, the references to "any fraudulent transaction" at subsection 2 and "violation of any rule or regulation..." at subsection (10) give legislative authority for and clear guidance of the Department in its rulemaking activity. PAMIC has proposed a set of comprehensive regulations of these important licensed insurance professionals. The PAMIC proposals are attached as an exhibit to this letter and were previously shared with the Department earlier in this rulemaking procedure.

Please note in the attached material that PAMIC suggested that these twenty-five prohibited acts "shall be deemed evidence of incompetency or untrustworthiness to transact the business of a public adjuster and shall be grounds for fine, suspension, or revocation of a public adjuster's license." The acts so deemed evidence clearly fall within the category of "incompetence or untrustworthiness" and indeed are frequently taken from existing regulations in other jurisdictions. (The source of each specific proposal, where applicable, is noted in the exhibit.) Study of both the proposals and their sources demonstrate that they are well thought out regulations of licensed professionals and are neither exceptional nor controversial.

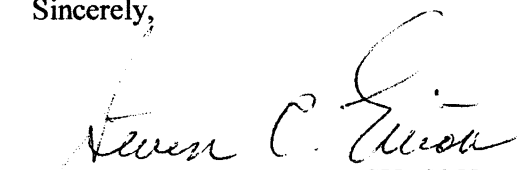
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Likewise, PAMIC would urge consideration of its proposed regulations governing communications. Currently, claims adjusters who are insurance company employees or independent contractors are subject to time constraints intended to assure that policyholder's' claims are expeditiously adjusted. The same concern for consumer protection that motivates those regulations argues for their applicability to public adjusters as well.

The Department is to be commended for its efforts in drafting this difficult regulation. The provisions for contract cancellation, for handling of settlement checks, and for licensing and educational requirements are excellent and bespeak much careful work. But it seems clear that, in enacting the statutory changes in P.L. 260, No. 72, Act of December 20, 1983, the legislature was inviting the Department to regulate these important insurance professionals much more closely in the consumer interest.

Thank you once again for your careful and candid consideration of PAMIC's concerns and for your Department's continuing interest in our membership's input on regulatory matters. As always, I will be happy to discuss any questions raised by these comments and suggestions.

Sincerely,



Steven C. Elliott, J. D., CPCU, CLU
President

/encl. (PAMIC proposal)

CC: P. Raub, PAMIC Chairman
J. Bookhamer, PAMIC GA Chair
R. Nyes, IRRC

CHAPTER 115. PUBLIC ADJUSTER CONTRACTS,
LICENSING AND PRACTICES

§115.1 Definitions
[No change.]

§115.2 Contents of public adjuster contracts, minimum standards.

All public adjuster contracts shall contain the following minimum information:

(1) The title of the contract: Public Adjuster Contract.

(2) Business name, address and phone number of the public adjuster.

(3) Name and address of insured.

(4) The consideration, expressed as a percentage and as a maximum amount.

(5) Date of execution (day, month, year).

(6) Signature of the insured and the public adjuster.

(7) The following language in bold face type of a minimum size of 10 points:

We shall promptly forward to you any written settlement offer made by or on behalf of the insurance company. [Source: Connecticut Regulations §38a-7690-6.]

(8) The following language in bold face type of a minimum size of 10 points:

Any person who knowingly and with the intent to defraud any insurer assists, abets, solicits or conspires with another to prepare any statement that is intended to be presented to any insurer in connection with or in support of a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim, including information which documents or supports an amount claimed in excess of the actual loss sustained by the claimant is guilty of a crime and may be subject to civil and criminal penalties. [Source: 18 P.S. §4117(a)(3).]

(9) [Identical to current §115.2(7) with respect to mandatory Right to Cancel language.]

(10) [Identical to current §115.2(8) relating to Notice of Right to Cancel language.]

§115.3. Additional Procedures.

[No change.]

§115.4 Inducing Cancellation of Contract Prohibited.

[No change.]

§115.5 Prohibited Acts and Revocation, etc. of License

The commission or occurrence of any of the following prohibited acts shall be deemed evidence of incompetency or untrustworthiness to transact the business of a public adjuster and shall be grounds for fine, suspension or revocation of a public adjuster's license:

(1) A misrepresentation of the right to cancel a public adjuster's contract.

(2) A knowing and material misrepresentation of the terms and effect of any insurance contract.

(3) Preparing or submitting an inventory or estimate of loss or damage other than that which is fair or honest. [Source: Ohio Regulations, Rule 3901-1-24(6).]

(4) Preparing or submitting an inventory or estimate which the adjuster knows or reasonably should know is false, deceptive or inflated.

(5) Submitting with any inventory or estimate a disclaimer as to the accuracy of the values or items set forth therein, or a disclaimer of liability or responsibility for its content.

(6) Failing to promptly communicate a written offer of settlement made by or on behalf of an insurer to the insured. [Source: Connecticut Regulations Relating to Terms of Public Adjuster Contracts, §38a-769-6.]

(7) Engaging in a pattern of failing to acknowledge and act promptly upon written or oral communications from insureds or insurers with respect to any claim or loss which the licensee is handling. [Source: Unfair Insurance Practices Act, 40 P.S. §1171.5(10)(ii).]

(8) Engaging in a pattern of failing to act in good faith to effectuate prompt, fair and equitable settlement of claims. [Source: Unfair Insurance Practices Act, 40 P.S. §1171.5(10)(vi).]

(9) Attempting to dissuade or prevent an insured from speaking privately or directly with an insurer, its representatives or any other person regarding the adjustment or settlement of a claim. [Source: Florida Regulations, §4-220.201(5)(a).]

(10) Making any false statements about any insurance company or its employees, agents or representatives. [Source: Connecticut Regulations, §38a-769-3(H).]

(11) Soliciting clients between the hours of 8:00 p.m. and 8:00 a.m.

(12) Attempting in any manner to solicit a loss during the progress of a fire or while the fire department or any of its representatives are in any manner engaged at the damaged premises; or in any way interfering with the performance of the duties of an investigator of any fire department, or law enforcement official. [Source: Ohio Regulations, Rule 3901-1-24(2).]

(13) Owning or acquiring any direct or indirect financial interest in any real or personal property which is the subject of a loss being adjusted, or owning or acquiring any financial interest in the sale of any salvage of any property which is the subject of a loss being adjusted. [Source: Ohio Regulations, Rule 3901-1-24(B)(7).]

(14) To pay or cause to be paid any compensation or thing of value to any person in consideration of, or as an inducement for the referral of a client or potential client. [Source: Connecticut Regulations, §38a-769-3.]

(15) Engaging in or attempting to engage in any fraudulent transaction with respect to a claim or loss that licensee is adjusting. [Source: Pennsylvania Public Adjusters Act, 63 P.S. §1606(a)(2).]

(16) Misrepresentation of the services offered or the fees or commission to be charged. [Source: Id. §1606(a)(3).]

(17) Misappropriation, conversion to his own use or improper withholding of monies held on behalf of an insured. [Source: Id. §1606(a)(5) modified.]

(18) Conviction by any court of, or a plea of guilty or nolo contendere to, a felony, or any crime arising out of acts performed in the business of a public adjuster, or of any other crime involving theft, dishonesty, fraud or crim. falsi. [Source: Id. §1606(4), extensively modified to broaden range of criminal conduct proscribed.]

[Language relating to conviction arising out of crimes performed in the business of a public adjuster is from California Regulations, §2691.18.]

(19) To pay or cause to be paid any commission or any other compensation or thing of value whatsoever to any agent, broker, attorney, partner, clerk, servant, employee or any other person, whosoever hired by or employed by or with any insured named in any policy of insurance as an inducement or solicitation to influence the contracting of services for the services of public adjuster or public adjuster solicitor with any insured. A public adjuster may utilize the services of any person authorized by the insurer to assist in connection with an insured's claim, provided said services must not conflict with the services required to be rendered by a public adjuster. [Source: Pennsylvania Public Adjusters Act, §1606(a)(6).]

(20) To receive, directly or indirectly, any compensation, commission, or thing of value or profit from any person, partnership, association or corporation engaged or interested in the business of salvage, repair, replacement, restoration, renovation or demolition of damaged property, real or personal, unless such compensation, commission or thing of value or profit is disclosed to the insured and agreed to in the contract. [Source: Id. §1606(a)(7).]

(21) Removal of a public adjuster's or public adjuster solicitor's office, accounts or records from the Commonwealth. [Source: Id. §1606(a)(8).]

(22) The closure of a licensee's office for a period in excess of 30 days, unless granted permission by the Insurance Commissioner to close the office for a longer period. [Source: Id. §1606(a)(9).]

(23) Violation of any provision of the Act, 63 P.S. §1601, et seq. or of these Regulations.

(24) Making a material misstatement in the application for any such license. [Source: §1606(a)(11).]

(25) The commission of fraudulent practices. [Source: §1606(a)(12).]

§115.6 Communications.

(a) The public adjuster shall promptly communicate to the insured any written offer of settlement made by or on behalf of an insurer within no more than 7 business days of receiving said offer. [Source: Connecticut

Regulations, §38a-769.5, "Settlement Offer". See also Pennsylvania Unfair Claims Settlement Practices Regulations, 31 Pa.Code §146.5 re obligations of insurers to acknowledge pertinent communications.]

(b) Public adjusters shall promptly act upon written and oral communications from insureds and insurers. An appropriate reply shall be made by a public adjuster within 10 business days of receiving an oral or written communication from an insurer which reasonably suggests that a response is expected. [See Pennsylvania Unfair Claims Settlement Practices Regulations, 31 Pa.Code §146.5 re corresponding obligations of insurers.]

(c) Public adjusters shall cooperate promptly with insurers in permitting and scheduling the inspection of any real or personal property involved in any claim or loss with which the adjuster is involved, and in no event shall such an inspection of property be delayed for a period of more than 72 hours after the public adjuster's receipt of a written request for said inspection, unless the insurer or its representatives asks otherwise.

(d) Neither the retention of a public adjuster, nor the foregoing provisions relating to the obligations of public adjusters with regard to communications shall prevent an insurer from directly communicating with its insured.

§115.7 File and Record Documentation.

The files of public adjusters and public adjuster solicitors shall be subject to examination by the Commissioner or by his appointed designees. The files shall contain notes and work papers pertaining to the claim in the detail that pertinent events and the dates of the events can be reconstructed. [Source: Pennsylvania Unfair Claims Settlement Practices Regulations, 31 Pa. Code §146.3 relating to corresponding obligations of insurers.]

§115.8 Other Remedies.

[Renumbering of former 31 Pa. Code §115.6.]

§115.9 Penalties.

[Renumbering of former 31 Pa. Code §115.7. Consider expansion or substantial revision. Statutory section referenced in present regulations appears to have been repealed.]

§115.10 Effective date of revision, filing and approval of existing contracts.

[To be determined.]

The Insurance Federation of Pennsylvania, Inc.

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John R. Doubman
Secretary & Counsel

March 1, 2002

Peter J. Salvatore,
Regulatory Coordinator
Special Projects Office
Pennsylvania Insurance Department
1326 Strawberry Square
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**Re: Public Adjuster Regulation: 31 Pa. Code
Chapter 115, Fiscal Note 11-146**

Dear Mr. Salvatore:

The Insurance Federation of Pennsylvania (the "Federation") is pleased to have this opportunity to comment on the proposed regulations governing public adjuster contracts and licensing which the Insurance Department (the "Department") published in the February 2, 2002 Pennsylvania Bulletin. Thank you in advance for considering our suggestions. These are grounded in the extensive experience of member companies in dealing with public adjusters.

Preliminarily, the Federation has no objection to the contents of the Department's published proposal. It represents progress in modernizing the old regulation to conform with the current authorizing statute. However, the Department has neglected the opportunity to exercise its rulemaking authority to help combat abusive activities in which some public adjusters engage. The Federation believes that the Department has the authority to and should add many additional safeguards to this regulation.

The Federation would be pleased to assist in any fashion with the preparation of a final form for submission which would contain all or any of the additional provisions suggested in these comments which are designed to cut down on abuses by public adjusters.

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1. Background of Suggested Improvements

As the Federation noted in comments submitted on September 12, 1996, when the Department was in the process of reviewing all of its regulations under a general mandate from Governor Ridge, revision of the adjuster regulation should not only modernize it to match Chapter 30 of Title 63, "but also strengthen it to address the compelling public interest of improved availability of urban coverage." That letter noted that such improvements were of particular interest to urban policyholders since public adjustment businesses are naturally attracted to population centers. An Urban Availability Task Force convened by the then Insurance Commissioner had noted that improvements in adjuster regulation could serve several public goals.

It is clear that the Insurance Commissioner, charged with administering and enforcing the Act under 63 P.S. Section 1608 and authorized to promulgate regulations toward that end, has wide discretion in fashioning licensing requirements and business practice standards. Moreover, many of the grounds for fines, suspensions and revocations under Section 1606 clearly invite both clarification and definition by the Commissioner. It is appropriate for the Commissioner to define and give examples of what she deems to be material misrepresentations, fraudulent transactions or practices, material misstatements or activities which demonstrate "incompetency or untrustworthiness."

The provisions in Section 1605 are ample evidence that public adjuster contracts and practices are particularly subject to abuse. This is evident from the contract strictures and rescission provisions in Section 1605, the list of prohibited practices in Section 1606 and the bonding requirement in Section 1604.

The Federation encourages the Department to strengthen the regulation in the respects outlined below so as to more completely fulfill its statutory responsibility to regulate this activity. From the definition of "public adjuster" in Section 1601 throughout the rest of the governing statute, it is obvious that this business is entirely an offshoot of the insurance business. The Insurance Commissioner should seize this opportunity to make sure that it operates ethically and in the public interest.

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2. Licensing and Qualification Improvements

a. Knowledge and Education Required of Applicants

The Federation generally supports the specification of the licensing requirements in Section 115.11 et seq. Member companies, however, are concerned that the regulations should specify that only adjusters who have proper training in both estimating and general business practices be licensed to practice in Pennsylvania.

Section 115.11 provides that license applicants must pass an examination "except as provided in subsections (b) and (c)." There are no subsections (b) and (c). I assume that those references are to the next succeeding sections, Sections 115.12 and 115.13.

At the outset, the Federation favors very restrictive, if any, exceptions to the requirements for passing an examination. If this is a new requirement, as judging by the draft, there is no rationale for excusing someone whose license has currently expired (Section 115.12). Likewise, the Federation does not favor reciprocity unless the same degree of expertise is required under another state's laws as in Section 115.13.

Most importantly, whether by amplifying the scope of Section 115.16 or in another fashion, the Federation suggests that an applicant should be tested on his knowledge of home and building construction, renovation, repairs and repair contracting practices and conditions and appraisals of real and personal property. Furthermore, the applicant should also be tested on his or her knowledge of the restrictions of the Act and, especially the contracting practices and prohibited activities specified in the regulation.

b. Continuing Education

The Federation reiterates the suggestion contained in its 1996 submission that the regulations impose a continuing education requirement on public adjusters. There are continuing developments in repair techniques, building materials and changes in building codes and restrictions. A continuing education requirement would help protect the public from unknowledgeable adjusters. The Federation

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proposes that this requirement apply to public adjusters rather than those working for insurers for several reasons.

Unlike those adjusters acting as independent businesses, insurers hire and train their adjusters under great pressure to produce competent practitioners and to supervise them closely. If an insurer fails to train its adjusters correctly so that they perform competently, the insurer can be sued for bad faith as well as breach of the contract. The Pennsylvania bad faith statute, 42 Pa.C.S.A. Section 8371, authorizes a court to award interest, punitive damages, court costs and attorney fees against an insurer. An insured who uses a public adjuster has no action for bad faith against the public adjuster or the public adjusting firm.

Since public adjusters are not subject to the bad faith statute and do not have the same level of interest in properly training and supervising their employees, the regulations should compensate to some degree by imposing continuing education requirements.

3. Business Practice Restrictions

a. Fraud Warning

By far the most common recommendation from Federation members is that the contract between the insured and public adjuster should contain an auspicious fraud warning. Several of our members have seen incidents where an insured has been misled by a public adjuster and it is the insured who is ultimately responsible for the alleged fraud. Consequently, while the insured may have signed claims forms which already contain a fraud statement, including this in the adjusting contract, which is clearly an important claims related document, will close a loophole and avoid any misunderstanding about the duty of both parties in submitting claims.

We recommend that the fraud warning place a burden on both the public adjuster and the insured, committing both to responsibility for the accuracy and truth of the information submitted to the insurer on any claim in which the adjuster has provided services. It might read:

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"Both parties to this contract agree that each of them severally is entirely responsible in each and every claim for which services under this contract are provided for complying with the requirement of 18 P.S. Section 4117(a)(3) that any person who knowingly and with intent to defraud any insurance company or other person files a statement or claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto, or which contains information which documents or supports an amount claimed in excess of the actual loss sustained by the claimant, commits a fraudulent insurance act which is a crime and which subjects the person to criminal and civil penalties."

b. Improper Client Solicitation

The solicitation of clients by public adjusters is an area that must be addressed by these regulations. There are two facets of the problem which our companies note.

(i) Cooling off Period

The law currently prohibits a public adjuster from soliciting a client within 24 hours of a fire, catastrophe or other occurrence. Our members' experience is that public adjusters are not honoring this restriction, and, indeed, can be found in some cases soliciting business even while the house is literally still burning.

The Federation's submits that the statutory limit is a minimum stay away period only. The Department in its role of determining what is a fraudulent, incompetent or untrustworthy practice would be within its authority to expand this to 72 hours. The Federation recommends that the regulation impose a 72 hour stay out so that the consumer may make a more informed, calmer and rational decision about the need to retain a public adjuster.

Consequently, it would improve the regulation to both recite the cooling off period in the regulations and expand it to 72 hours.

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(ii) Deceptive Solicitations

Insurers have come across various techniques by which public adjusters solicit business which are unethical. In one case, a public adjusting firm ran an employment advertisement and when contacted, as the first order of business, asked to visit the inquirer's house to see if there were any claims which could be submitted. Other unethical contacts center around unsolicited approaches and the use of fire and police personnel to solicit clients. The Federation believes that some limitations must be placed on the ability of public adjusters to solicit claims and that requirements should be created to ensure that these are conducted in an honest and truthful manner.

The most logical step to cut down on most of these practices is to flatly prohibit adjuster initiated solicitations. This would likely run afoul of commercial speech guarantees, so some specification of improper techniques would be necessary to sustain the regulation. Clearly, solicitations under false pretenses (like employment offers) and adjuster solicitations initiated by unrelated third parties being compensated by adjusters should be defined as activities which demonstrate untrustworthiness.

c. Claims Processing

Regardless of whether the Department can promulgate regulations directly regulating adjuster behavior or must act only through defining certain conduct as evidence of incompetence or untrustworthiness, the Federation strongly recommends that adjusters be required to comply with reasonable practices as they perform their services. The following prescriptions are some, but not all, of the areas where the activities of adjusters have to be regulated so as to work in harmony with insurer functions.

(i). Notification of Representation

The regulations should mandate immediate notification of the insurer of the public adjuster's representation. Insurers sometimes contact an insured only to find that an adjuster has been retained, resulting in a delay in the

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adjustment process and sometimes in the receipt of conflicting information.

The notification should include a copy of the signed Notice of Right to Cancel and a copy of the adjuster's contract with the insured. The adjuster's contract with the insured may contain various provisions which impact on the insured's rights under his policy and his rights under Pennsylvania insurance laws as well. In light of the involvement of all the parties to the claims process, it is clear that the insurer should have the same right to understand the adjuster's relationship with the insured as the adjuster does to understand the insured's insurance policy.

(ii). Property Inspection

Prompt inspection of property allegedly damaged or injured assures the preservation of evidence and expedites the adjustment of the claim to the insured's benefit. Companies report that some public adjusters restrict inspection to their schedule and for their own reasons, resulting in significant inspection delay. This exposes insurers to potential bad faith claims for untimely claims handling. See, for example, *Polselli v. Nationwide*. The regulations should prohibit this type of behavior and characterize it as incompetent or untrustworthy.

(iii). Settlement Offers

Insurers often find that insureds are not advised of their settlement offers. The regulation should require public adjusters to communicate any and all settlement offers from an insurer to the insured in writing within three business days of receipt.

(iv). Unauthorized Practice of Law

It would benefit both the marketplace and the adjuster community if the regulations would clarify that public adjusters are subject to the prohibition of the unauthorized practice of law. Insurers continually come across adjusters, who are not attorneys, who advise their

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clients on the law and quote law and legal precedent during the adjustment process.

(v). Impeding Insurer Contact

Closely allied to the previous problem is the assumption by public adjusters that they are entitled like attorneys to prevent insurers from directly communicating with their insureds. Adjusters, with few exceptions are not attorneys and their relationship with their clients is not entitled to the type of protection given to the bar. There is no rationale for why an adjustment arrangement should be given preference when it comes to communicating over the mutual duties in an insurance contract.

It should be an untrustworthy or illegal practice for an adjuster to attempt to dissuade or to take any other action to prevent an insured from speaking directly with an insurer about the settlement or processing of a claim. Moreover, the statement of this principle should make clear that nothing in the law or regulations is to be interpreted as authorizing an adjuster to interfere with the freedom of an insurer to communicate with its insured.

(vi). Communicating Responsibly

Insurers and their employees, including adjusters, are subject to heavy regulation and restrictions concerning their claims processing and to significant potential penalties if they fail in this regard. Adjusters retained to assist insureds with claims become part of that exact same process. Even if adjusters are not subjected to the same heavy financial penalties as insurers, there is every reason in public policy and the interests of consumer protection to require a modicum of responsiveness and accountability on public adjusters in working on an insurance claim.

The Federation recommends that consistent with the Unfair Insurance Practices Act and the Department's unfair claims settlement practices regulations, public adjusters should be required to make a responsive and appropriate reply to any written or oral communication from an insurer with respect to a claim being adjusted within 7 business days of receiving it if the communication solicits a reply.

March 1, 2002

Page nine

Moreover, an adjuster should be deemed to be engaging in incompetent or untrustworthy claims practices if he or she has demonstrated a pattern of failing to respond to communications from the insurer or the insured. A pattern is any demonstration that three or more communications have gone untended for an unreasonable time or one inconsistent with these regulations.

The Federation regrets the length of these suggestions. Please understand that in order to deal with repeat violators of many of the practices cited that it is essential to have regulatory guidelines with which to work. These carry significant weight regardless of whether the Department is at all times staffed and ready to act effectively to detect and punish these practices. Thank you again for your consideration.

Sincerely,

John R. Doubman

Comments on the regulation listed below have been received from the following:

<i>Reg #</i>	<i>Regulation Title</i>				
<i>11-146</i>	<i>Public Adjuster Contracts</i>				
<i>Mr. John Doubman</i>		<i>Date Received</i>	<i>03/04/2002</i>	<i>Date Sent To Cmtes/IRRC</i>	<i>03/05/2002</i>
<i>Secretary and Counsel</i>					
<i>Insurance Federation of Pennsylvania, Inc.</i>					
<i>1600 Market St.</i>					
<i>Philadelphia, PA 19103</i>					
<i>Phone (215) 665-0508 X00000</i>					
			<i>Letter Co-Author</i>		
			<i>EMail</i>	<i>jdoubman@ifpenn.org</i>	

SEARCHED - 7 11 8:34
SERIALIZED - 7 11 8:34
INDEXED - 7 11 8:34
FILED - 7 11 8:34
MAR 11 2002
FBI - PHILADELPHIA

ORIGINAL: 2246

Comments on the regulation listed below have been received from the following:

<i>Reg #</i>	<i>Regulation Title</i>			
<i>11-146</i>	<i>Public Adjuster Contracts</i>			
<i>Mr. Scott E. Seeherman</i>		<i>Date Received</i>	<i>02/08/2002</i>	<i>Date Sent To Cmtes/IRRC</i> <i>02/11/2002</i>
<i>President</i>				
<i>PAPIA</i>				
<i>8 Gersham Place</i>				
<i>Kingston, PA 18704-4809</i>		<i>Letter Co-Author</i>		
<i>Phone</i>	<i>(570) 824-4619 X00000</i>	<i>Email</i>	<i>Adjusters@prodigy.net</i>	

Salvatore, Peter

From: COMMONWEALTH ADJUSTERS [Adjusters@prodigy.net]
Sent: Friday, February 08, 2002 4:07 PM
To: psalvatore@state.pa.us
Subject: Fw: 31 PA. Code CH. 115 (Public Adjuster Contracts and

----- Original Message -----

From: COMMONWEALTH ADJUSTERS
To: psalvator@state.pa.us
Cc: gveno@pachiropracticass.org ; ahcasper@pond.com ; dburr@youngadjustment.com
Sent: Friday, February 08, 2002 12:57 PM
Subject: 31 PA. Code CH. 115 (Public Adjuster Contracts and Licensing)

Dear Mr. Salvator:

Despite the fact that the Pennsylvania Bulletin states that you received external comments from the Pennsylvania Association of Public Insurance Adjusters with regards to the proposed contract changes, I have no knowledge of any such contact.

As President of the Pennsylvania Association of Public Insurance Adjusters please be informed that our Association has several concerns regarding the proposed revisions wherein you intend to formulate a standard contract.

Our concerns relate to the requirement of setting a maximum fee of fifty percent. Although, we are aware that approval is given to any contract bearing a fifty percent cap we feel that percentage to be excessive and not in the best interest of public adjusters or their clients. It is suggested that a cap of twenty percent is certainly indicted of a fair and equitable cap.

Secondly, in that your intent is to have a one page contract which includes a bottom tear off for cancellation it is our position that notice of such cancellation at the bottom of the contract is sufficient in the need to reiterate that right in the text of the contract seems to be prejudice.

As a suggestion, I ask that you review the contract of Commonwealth Adjusters which is on file with your department and a copy of which follows this email as a model contract for your proposed changes. The format of this contract has been used for at least the past ten years without any problems from the Insurance Department nor the public. You will notice that all members of the Pennsylvania Association of Public Insurance Adjusters currently use this general format without problem and I believe you will find same.

Please contact me at your earliest convenience in order that we may discuss our respective concerns. I can be reached at 570-824-4619.

Thanking you in advance for your consideration in this matter.

Very truly yours,

Scott E. Seeherman
President of PAPIA

02/11/2002

Commonwealth Adjusters

FACSIMILE COVER SHEET

8 Gershom Place
Kingston, PA 18704-4809
Phone number-570.824.4619
Fax number-570.822.6580

RECEIVED

FEB 11 2002

Insurance Department
Office of Policy, Enforcement
& Administration

Send to: Commonwealth of PA Ins. Department	From: Scott E. Seeherman
Attention: Peter Salvator	Date: 2/8/02
Office Location:	Office Location:
Fax Number:717-772-1969	Phone Number:

- Urgent
- Reply ASAP
- Please comment
- Please review
- For your information

Total pages, including cover: 2

Comments:

Dear Peter:
Enclosing herewith is a copy of our contract as a supplement to our email that I sent you.

Scott Seeherman
President of PAPIA

THE INFORMATION CONTAINED IN THIS FACSIMILE IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE ABOVE NAMED. IF THE READER OF THIS FACSIMILE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE AND RETURN ORIGINAL MESSAGE TO US AT:

8 GERSHOM PLACE
KINGSTON, PA 18704-4809

VIA UNITED STATES POSTAL SERVICE. WE WILL REIMBURSE ANY COSTS YOU INCUR IN NOTIFYING US AND RETURNING THE FACSIMILE TO US. THANK YOU

COMMONWEALTH ADJUSTERS

Adjusters of Property Losses for the Assured
8 GERSHOM PLACE
KINGSTON, PA 18704-4809



Telephone: (570) 824-4619
Facsimile: (570) 822-6580
E-Mail: adjusters@prodigy.net

PUBLIC ADJUSTERS CONTRACT

TO THE INSURANCE COMPANIES INTERESTED:

THIS is to certify that on this _____ day of _____, 20____
COMMONWEALTH ADJUSTERS, or their representative is hereby retained by _____

of _____
(Address)

to advise and assist in the adjustment of the insurance claim arising from loss by _____
which occurred at _____
on the _____ day of _____ 20____ at or about _____ M., and it is agreed to pay
the said COMMONWEALTH ADJUSTERS a fee of _____ percent (____%) of the
amount paid or agreed to be paid by the insurance companies and/or other responsible parties
in the settlement of the loss, claim and/or any other cause of action arising from the loss or
claim and expenses, hereby assigning to the said COMMONWEALTH ADJUSTERS all monies
due or to become due from the insurance companies and/or other responsible parties
interested to the extent of said fee and expenses. The fee of COMMONWEALTH ADJUSTERS
shall be due after proofs of loss are sworn to and/or the first draft collected.

THE FEE STATED ON THIS CONTRACT SHALL NOT BE IN EXCESS OF TWENTY PERCENT (20%)

(Seal)

(Seal)

COMMONWEALTH ADJUSTERS

by _____

NOTICE OF RIGHT TO CANCEL

Date _____, 20____

You may cancel this contract without penalty or obligation within four (4) calendar days from the date above. If you exercise your right to cancel this contract, you will remain liable to Commonwealth Adjusters for reasonable and necessary emergency out-of-pocket expenses or services which were paid for or incurred by Commonwealth Adjusters during the said four day period to protect your interest.

If you cancel, anything of value given by you under the contract will be returned within ten (10) business days following the receipt by Commonwealth Adjusters of your cancellation notice and any security interest arising out of the contract will be canceled.

To cancel this contract, mail or deliver a signed and dated copy of this notice or any other written notice, facsimile or telegram indicating cancellation and the date thereof to Commonwealth Adjusters at the address shown at the top of this contract not later than midnight of _____, 20____.

I HEREBY CANCEL THIS CONTRACT.

Date: _____ Insured: _____