Consumer Claims Journal

THE MAGAZINE FOR PUBLIC ADJUSTERS
SPRING/SUMMER 2024

Industry Under Fire

Smoldering California Legal Issues

The Need for a Unified Voice

Public Adjusters As Policy Advocates

Photo by Christopher Burns on Unsplash

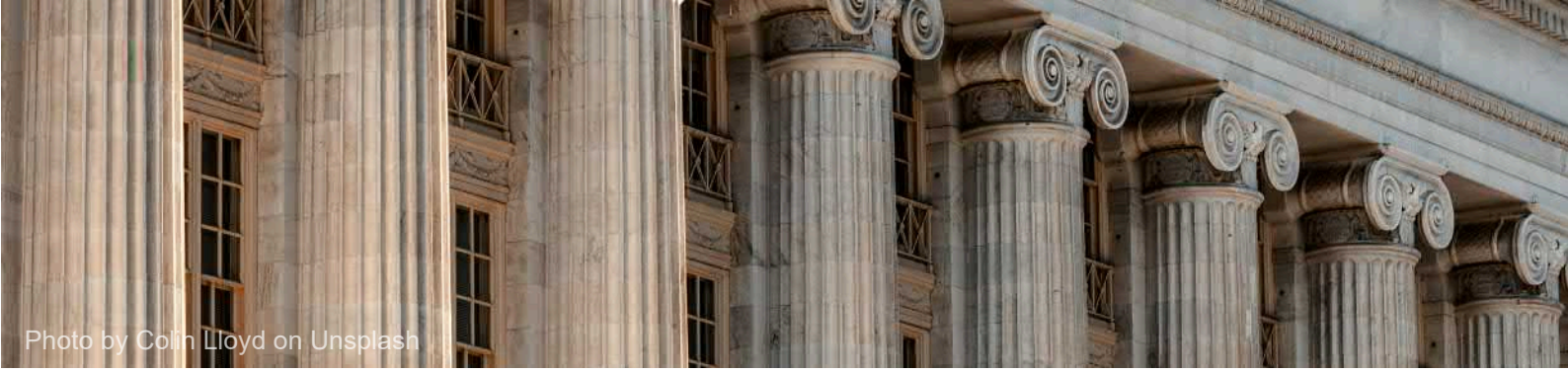
Photo by Colin Lloyd on Unsplash

Industry Under Attack

by Brandon & Marta Lewis

It's no secret that our industry is under an organized attack by the insurance companies. They are working feverishly to limit the influence and impact that our advocacy as public adjusters provides to policyholders. We have always been targets for carriers, but in the last 36 months they have stepped up their efforts to inhibit our participation in the claims process. From policy endorsements to new legislation, they are persistently employing all available means at their disposal to try and eliminate us from the process, thus minimizing payments to policyholders.

As we all know, proper advocacy wins the day for policyholders by combating and overcoming the intentional delay and deny-tactics carriers employ through providing the necessary support, guidance, and professionalism our clients need to restore their homes and businesses. Without public insurance adjusters, insurance companies would pay a fraction of the claims made. Without accountability or redress, this would leave policyholders in the cold, absent of any funds necessary to rebuild and recover. The actions that carriers are taking against public adjusters are unscrupulous; however, this is not surprising. They are desperate, and in their desperation they have resorted to changing the rules of the game to produce their desired outcomes.

The policy response we experienced in the aftermath of Hurricane Ian has been nothing short of shocking. Some carriers have induced policyholders into policies with endorsements that forbid the hiring of any claim consultants/ public adjusters, and that is an absolute travesty. These endorsements have produced a chilling effect and have forced many policyholders to enlist legal representation in an attempt to manage their claims. This is just one of the many issues we must collectively overcome to ensure policyholders are properly indemnified.

Some of the more egregious actions taken against public adjusters include the following:

Anti-PA Policy Exclusions

For several Hurricane Ian claims, we have experienced a few carriers who enforced endorsements, eliminating the utilization of public adjusters/ claim consultants. NAPIA has led the fight against this and is to be lauded for sending letters to all state attorney generals, as well as actively raising the issue with the insurance departments.

As stated in Merlin Law Group's article on the issue, "...the primary legal argument is that the anti-public adjuster contracts are void against public policy:

If a contract or contractual provision is contrary to public policy, it is not enforceable. See, e.g., 159 MP Corp. v. Redbridge Bedford, LLC, 33 N.Y.3d 353, 128 N.E.3d 128, 104 N.Y.S.3d 1 (N.Y. 2019) ('We have deemed a contractual provision to be unenforceable where the public policy in favor of freedom of contract is overridden by another weighty and countervailing public policy...'); Trust v. Reliastar Life Ins. Co., 60 So.3d 1148, 1150 (Fla. App. 2011) ('as a general rule, contracts that are void as contrary to public policy will not be enforced by the courts and the parties will be left as the court found them'); Rogers v. Webb, 558 N.W.2d 155, 156-57 (Iowa 1997) ('Contracts that contravene public policy will not be enforced.'); O'Hara, 127 Ill.2d at 341 ('courts will not enforce a private agreement which is contrary to public policy')."1

Removing Appraisal and Replacing it with Mandatory Arbitration – Florida

In early 2022, The Florida Office of Insurance Regulation gave approval to a filing by American Integrity Insurance for a request to approve a mandatory arbitration and mediation endorsement in homeowners multi-peril policies, starting April 22, 2022 for new business and June 21, 2022 for renewals.

Arbitration provisions, such as the one above, are subtly pernicious and can be severely oppressive to policyholders. As noted in Public Citizen in *"Arbitration Clauses in Insurance Contracts: The Urgent Need for Reform,"*

> *"The growing use of binding, pre-dispute arbitration clauses poses a huge threat to insurance consumers. It represents a major shift in the balance of power between insurers and consumers that must be addressed by state legislators and insurance regulators."2*

As Chip Merlin stated so well, "Eleven states ban arbitration of property insurance disputes. Not Florida. While I strongly disagree with the approval of the form, Florida public policy is to allow alternative dispute resolution including arbitration. Since the legislature has not taken up suggested bans on arbitration over the last three sessions and given court approval of arbitration, the Insurance Commissioner may have found that this form allowing arbitration follows public policy. This provision is a game changer. My prediction is that since the Florida Office of Insurance Regulation approved the form, many insurers will follow suit and apply for similar policy language. If the courts allow the provision to stand, the answer to the question will be 'yes.'"3

Removing appraisal and replacing it with mandatory arbitration is another destructive attempt by the carriers to limit their responsibilities. This endeavor will have far reaching impacts to the detriment of policyholders across the country.

PA's Not Allowed To Practice In Certain States

Forty-six states license public adjusters. Alabama, Alaska, Arkansas, South Dakota, and Wisconsin currently do not. This is a major issue in non-licensing states, because contractors and other non-licensed actors are practicing pseudo-public adjusting through the application of the assignment of benefits from the policyholder. Already at extreme risk of being underpaid by the carrier, the environment for the policyholders in these states becomes even more tenuous when contractors exercise their AOB rights and liquidate policy coverages without fully and properly restoring the policyholder's property, leaving them out in the cold to find funding to rebuild. This problem is rampant in non-licensed states. It is driven by legislatures and bar associations who seemingly cut off their noses to spite their faces and consequences to policyholders in these States.

PA Fee Cap Legislation – Kentucky

The Kentucky legislature has pending legislation which significantly alters public adjuster contracts. Most notably, it addresses compensation with the application of fee caps, proposed as follows:

1. 2.5% fee cap on the first $25,000 of a claim.
2. 10% fee cap on all amounts over $25,000.
3. 10% fee cap on catastrophe claims.

These fee proposals are a direct attack on policyholders as 90% of all claims are under the $25,000 threshold, which means the carrier would in no way be held accountable to properly and fully indemnify a policyholder's claim.

To state the obvious, no public adjuster would be willing to take on a claim with this type of fee structure. There is no cost-benefit scenario in which this works for public adjusters. The amount of work needed to inspect, estimate, present the loss, as well as letter writing, phone calls, and negotiations could never justify the best-case-scenario of a $442.50 fee from a $25,000 claim. Even if the claim rises to $50,000, a net fee of 6.25% would not justify the work required to properly administer the claim.

This calculated, carrier-friendly legislation only works to protect the interests of the insurance companies to the absolute disservice of the policyholders. Every insured, whether it be a homeowner, small business owner, landlord, tenant, or multibillion dollar corporation deserves their claim to be

, whether it be a homeowner, small business owner, landlord, tenant, or multibillion dollar corporation deserves their claim to be properly and fully paid and to be represented by a professional who understands the claims' process and can fully advocate on their behalf. This bill will functionally eliminate that choice as it will allow insurance companies to run unchecked and unchallenged on over 90% of the claims they handle.

Closing

The intent of this article is to not only provide insight, but, more importantly, to collectively galvanize our resources in order to overcome the intentionally oppressive activities the carriers relentlessly pursue to limit their exposure and thus their responsibilities to policyholders. We must fortify our efforts to protect our standing and ability to advocate for policyholders and safeguard their interests. If not, we will find our profession toiling with no ability to serve a public that desperately needs the protections and expertise that we provide**.**

1 Merlin Law Group Article, "Anti-Public Adjuster Endorsements—NAPIA Takes a Leadership Stance Against the Insurance Industry Trying to Eliminate Public Adjusting" by Chip Merlin

https://www.propertyinsurancecoveragelaw.com/2023/02/articles/consumer-protection/anti-public-adjuster-endorsements-napia-takes-a-leadership-stance-against-the-insurance-industry-trying-to-eliminate-public-adjusting/

2 Public Citizen Article, "Arbitration Clauses in Insurance Contracts: The Urgent Need for Reform"

Arbitration Clauses in Insurance Contracts: The Urgent Need for Reform

3 Merlin Law Group Article, "Is Arbitration Going to Replace Appraisal in Florida?" by Chip Merlin https://www.propertyinsurancecoveragelaw.com/2022/04/articles/insurance/is-arbitration-going-to-replace-appraisal-in-florida/