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Good, Bad, Ugly Looking Back at Sandy and Industry's Readiness – Ronald J. Papa

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In this issue of the Insurance Advocate, we present a testimony given by Ronald J. Papa of National Fire Adjustment Co., Inc. in his capacity of Past President of the National Association of Public Adjusters (NAPIA) to the National Association of Insurance Commissioners (NAIC). This testimony is rather thoughtful and deserves reading as do the side bars with a look at hurricane and flood preparedness through the eyes of the Casualty Actuary Society and Insurance Information Institute. Of course, the book is far from written on Sandy, yet, from what we have come to know of the work of FEMA, the American Red Cross and, of course, the insurance industry itself, despite its critics and misgivings, the overall response will prove a text book example for the future on cooperation among agencies, on ethical behavior on behalf of those who are depended upon in such circumstances and, as an example of just about the best that can be done under dire circumstances. We commend this thoughtful testimony to your attention and look forward to the response of all parties to continue to register in these pages responses to the responders and responses to Sandy.

Ronald J. Papa of Buffalo, New York, President of National Fire Adjustment Co., Inc., a fourth-generation family owned-and-operated public insurance adjustment firm, is also a past president of the National Association of Public Insurance Adjusters, the oldest professional association of public adjusters in the country. On behalf of NAPIA President, Ron Reitz, the NAPIA officers, and the hundreds of public insurance adjusters that comprise the membership of the country's top public adjuster trade association, he offered this testimony before NAIC.

The good and the bad of the catastrophe claims process are currently on display in cities and towns throughout New York, New Jersey, Connecticut and other mid-Atlantic and northeast states. As residents and businesses impacted by Superstorm Sandy continue to recover from the enormous destruction of this event, many are learning for the first time the complexities—and vaguaries—of the insurance claims process. For some, the result of the claims process will be satisfactory; for others it will be wholly unsatisfying and may well prevent them from returning to a home or re-opening a business. As with so many disasters, where goodwill initially seems to be in abundance only to find it in short supply just a few weeks into the recovery process, Sandy is now educating a whole new segment of the public to the complex and perhaps archaic way insurance is written and processed in the United States.

The headlines tell a story all their own: from the New York Daily News: "Some insurance companies to Sandy victims: You are covered for hurricanes, not floods"; from the New York Post: "Homeowners face insurer sandbagging"; from WPIX-TV: "Long Island Homeowners Face Insurance Nightmare."; from Reuters: "After Sandy damage, insurance adjusters may bring more bad news"; and, again from the New York Daily News: "Storm-savaged Brooklynites

fighting with insurers and the feds." On the ground there is a palpable sense of frustration and despair that the financial safety nets many thought were there are proving to be mere illusions. This hearing and the concerns of the National Association of Insurance Commissioners over elements of the catastrophe claims process pre-date Sandy's arrival in late October; the foresight in calling this hearing is only punctuated by the enormous impact of this most recent storm. Instead, this hearing was conceived long before anyone knew of Sandy because of well-known challenges in the management of catastrophe claims in the past. NAPIA appreciates, first and foremost, the NAIC's continuing focus upon these issues and the opportunity for NAPIA to join the public discussion on the nature of these problems and steps that can and should be taken to address them.

Sam Friedman, well known to us all as the former editor of the National Underwriter, recently wrote in that journal that a survey conducted for the national consulting firm Deloitte may have summed up the core issue concerning the catastrophe claims process (indeed, a claim for any type of loss) when he asked the following rather probing question based on comments received from survey participants: "If processing a claim is indeed the moment of truth in an insurer's relationship with customers, why are small business consumers being kept in the dark when it comes to how a loss will be handled?"

For public insurance adjusters, public education on insurance coverages (the what's in versus the what's not in) and insurance claims processes (the what to do's versus the what not to do's), are central to any effort at improving the claims process. While this panel has asked for opinions on specific coverage issues, among other things, and which I will offer opinions in a few moments, this discussion must necessarily start with the issue of public education of the claims process. Friedman continued: "I found it somewhat alarming that so many of these small-business consumers were ignorant about how a claim is handled, particularly if the facts of the loss or coverage details are brought into question. It sounded to me as if insurers were asking for trouble—in the form of reputational damage, the loss of business and the threat of bad-faith litigation—as long as buyers are often clueless about their coverage and the claims-management process." This is a damning assessment of the industry, especially when placed in the context of Sandy. The issues arising with this storm have come to highlight, among other things, the rather dysfunctional vector point of private insurance and federal flood insurance, which is as smooth as a shard of glass. As spot-on as Friedman's condemnation of the insurance industry's efforts to keep many claimants in the dark about the realities of the claims process may be, it could be expanded upon even further when coupled with the significant misinformation—some at the hands of the insurers themselves and, regrettably, some within

the regulatory community as well—purveyed about public insurance adjusters and their efforts to represent insureds in the claims process.

Public insurance adjusters—or PAs as they are better known—may be the single most important friend of the insured when it comes to navigating the claims process. Sandy is just the latest body of evidence supporting this notion. Many insureds rely upon those who sold them the insurance, brokers and agents, to help them navigate the claims process, as Friedman's survey found. In many cases, these insurance professionals are excellent representatives for the consumer, but their expertise is mostly at the front-end of the process, namely the underwriting and securing of coverage. Others, especially captive agents who are employed by the carriers, will not be able to exercise the requisite independence from their carrier employers when the push comes to the inevitable shove within the claims process. Public adjusters, rather, are truly independent representatives working solely on behalf of claimants, bringing significant insurance knowledge (buttressed, for NAPIA members, by mandatory continuing education through the same organization that also confers CPCU degrees, among other entities) to the claims process. The key to the claims process is in understanding what the insurance value proposition cemented during the insurance procurement process means to a claimant. Insurers argue regularly, and incorrectly, that public insurance adjusters increase the cost of insurance by inflating the size of claims; PAs don't look to get more than what the insurance policy provides, assuring delivery of all the benefits that a policy provides and promises as a result of that value proposition. There is oftentimes a wide delta between that factor and what an insurer is willing to offer on a claim.

Public insurance adjusters are just like insurance agents and brokers, or independent adjusters who, somewhat incongruously to their professional title, represent the insurance company in almost all cases. In 45 states, public adjusters are licensed and regulated by state insurance departments. As small businesses themselves, public adjusters are also regulated by the marketplace, relying upon reputation for trustworthiness and effectiveness to remain in business. Further, as members of NAPIA, these elite public adjusters are held to the highest professional standards in a quasi-self-regulatory organization setting.

NAPIA leadership and members from around the country have spent the past year traveling around the country meeting with insurance regulators from Florida, Kansas, New York, Colorado, Texas, Illinois and many other states to educate regulators as to the role of public adjusters and their important contribution to the claims process. Public insurance adjusters have been maligned by over-generalizations of the industry fueled by some bad actors in a way not done to insurance agents, carriers and other licensees, many of which also have their share

of unscrupulous characters. Right now, claimants on the east coast are clamoring for the assistance of public adjusters and state insurance departments have been allowing emergency licensing and other catastrophe limited exemptions from the usual rules in order to accelerate the number of public adjusters allowed to assist the millions of claimants coming out of Sandy. The regulator's understanding of the public adjuster's true value has improved significantly. Consequently, instances of public comments by regulators or their staffs misrepresenting what public adjusters do or how they operate have been on the decline and for that we are grateful.

Public adjusters and the regulatory community forged a strong working relationship during the crafting of the public adjuster licensing act in 2005. Brian Goodman, NAPIA's general counsel, spent much time with commissioners and staff to see the model act through to fruition. This model has served as the foundation for many, if not most, of the public adjuster licensing measures passed in numerous state legislatures since the model's acceptance by the NAIC as MDL-228.[1] Without doubt, the passage of the model act at the NAIC and in state houses across the country have vastly improved the professionalism of those licensed to practice this profession. Since then, though, there has not been a continuous flow of communication between regulator and regulated, something NAPIA is now looking to rectify and for which it takes full responsibility. Better exchanges of ideas and intelligence on public adjuster fees, public adjuster assistance on disaster data gathering, self-surveillance of public adjuster activities by the industry, and of course on the most challenging problem for both the public adjuster community and the regulatory community—the unauthorized practice of public adjusting, or UPPA, by those not licensed—are not merely on the horizon; they are here. The unauthorized practice of public adjusting continues to serve as a parasitic force within the industry, preying upon an unwitting consumer population by offering deals that are simply too good to be true.

Unlicensed contractors, roofers, lawyers and others who hold themselves out as licensed public adjusters or who circumvent state law by lurking in the shadows, feeding on the commotion of a disaster and offering to serve the public in settling claims with insurers without even pretending to be authorized to do so, are as much a scourge to the legitimate public insurance adjuster community as they are to regulators, law enforcement and emergency management professionals. Those engaged in UPPA are out there deliberately trying to harm the public through their own special brand of fraud. Worse still, they also will prevent insureds from gaining the kind of information that is often critical to the wholesale recovery from a disaster,

[1] Twelve states have adopted some version of MDL-228: Idaho. Illinois, Iowa, Kentucky, Louisiana, Mississippi, New Hampshire, North Carolina, Pennsylvania, South Carolina, Virginia and West Virginia. It should also be noted that Model Act-derived bills are under active consideration in Alabama, Georgia and Wisconsin.

far beyond just insurance claim proceeds. The professional, licensed public insurance adjuster is knowledgeable about FEMA and NFIP interfaces with private coverage, Small Business Administration loans and other elements of the economic safety net which may be as crucial— if not more so, in situations such as Sandy which will prove to be much more of a flooding event than a wind or fire event— as any insurance recoverable which may be available.

A critical element missing in the war on UPPA is the insurer's direct engagement on it. Insurers—many at least— are well known for loathing the engagement of a public insurance adjuster on a claim and go out of their way in many instances to discourage a claimant from doing so. The transparency that Mr. Friedman calls for in his piece ("Insurers also have an obligation, I would think, to not only clearly communicate their coverage up front in terms most small business consumers could understand but to make the claims-management process more transparent and user-friendly as well.") must include the sharing of information by insurers and others on the value that a public insurance adjuster may provide to the claims process. Further, in addition to offering transparency, the insurers must be vigilant not to wittingly or unwittingly work with those they know are improperly holding themselves out as licensed or otherwise authorized representatives of their insureds. They may be the only party "in the know" who can call out someone engaged in UPPA; it should be part of their obligation as licensees of the state to do so.[2] An aggressive crack down on UPPA is needed and needed now if the consumer is to be protected, especially in times of catastrophes. Texas and Arizona, for example, recently issued bulletins warning against adjusting claims without a license. In June of this year, Commissioner Eleanor Kitzman from Texas noted it has come to the attention of the Texas Department of Insurance that a number of contractors, roofing companies, and other individuals and entities not licensed by the department have been advertising or performing acts that would require them to hold a public insurance adjuster license. Additionally, the department has learned that the tactics used by these unlicensed individuals include visiting neighborhoods and areas of the state where languages other than English are commonly spoken. These unlicensed individuals often prey on unknowing consumers by promising to 'work' insurance claims to achieve a higher settlement.[3] Arizona's concerns focused specifically on catastrophe scenarios and the proliferation of UPPA: Over the past fifteen years, there has been a growing trend where out of state and specialty restoration contractors come to

[2] What could the insurance industry's response possibly be when approached by someone such as the contractor whose advertisement is attached here as Exhibit A? Is it the clear conflict of interest that the insurer will ignore, is it the "too good to be true" bargain that the contractor is offering the claimant that the carrier will try to take advantage of by cutting a deal with this contractor? Or, is it the numerous misspellings that will raise a red flag among an experienced claims handler?

[3] NAPIA also applauds Commissioner Kitzman for establishing an advisory group inclusive of public insurance.

catastrophe areas. Some have one or two page contracts that essentially give them the right to act as the contractor and adjust losses for policyholders, as the contracts require payment based upon the insurance recovery. The Arizona Department of Insurance noted this trend that it is illegal and the possibility of exploitation [is high].

NAPIA stands ready to work with the NAIC and insurers to make certain that only qualified and licensed public insurance adjusters are representing insurance consumers.[4]

As noted earlier, so much of what goes on in the claims process is reflective of the comprehensiveness of the underwriting process. Public insurance adjusters, in their practices, are oftentimes asked to rewrite a script that may be months or years old, and a script of a conversation of which they were not a part. The discussions at the front end of the insurance process—agents understanding what clients need, communicating with markets to get coverages that best fit those needs, explaining to insureds how bound coverages fit or diverge from those identified needs, and the consumer understanding what they have or don't have by way of coverages. It is axiomatic that some policies are re-underwritten in the claims process, many times for the benefit of the insurers and sometimes for the benefit of the claimant, but by and large the issues in the claims process—aside from the shortcomings within the claims process itself—come from shortcomings in the underwriting process.

Some of the issues on the front end are by design; as some of your questions infer, there may not be sufficient transparency as to how coverages relate to risks, and how premiums relate to coverages. Many consumers believe having insurance equates to having insurance for everything and that is the way some in the industry seem to like it. We all know that is not accurate, however, and it is a real kick in the teeth, as they say, to only find that out after a claim. Some agents never take the time to explain these critical issues because the economics of the modern insurance agency may not allow the time to do so, and many insureds simply don't take the time to understand them when the erstwhile agent tries to do so.

Also, the way insurance is marketed these days, where on line applications and promises of binding coverage in less than 15 minutes bring visions of efficiency nirvana, is antithetical to consumers truly understanding what they are buying.

[4] A number of other states have put out regulatory pronouncements on UPPA and those measures are appreciated by NAPIA and its members. Iowa, Minnesota, North Carolina, Ohio, and Oklahoma, among others, have issued directives forbidding the unauthorized practice of public adjusting, stating that only public adjusters are licensed to work for insureds on first-party claims matters. As stated below, NAPIA strongly

Further, many insurers are simply not selling their own wares anymore; cross selling of auto by separate homeowners carriers, and vice versa, has led to many problems once claims develop. Some of the issues on the front end reflect the realities of insurance: business owner policies are not meant to be fully comprehensive coverages. Additional coverages may have to be bought for additional endorsement fees in order to make the policy complete for a specific insured, and exclusion may also have to be covered by additional or alternative coverage. Likewise, the flood insurance is not covered by private insurance, and much of the trouble that arises in the claims process focuses on claimants—for the first time—understanding the awkward interface between the two totally different insurance mechanisms of private insurance and the federal flood program. Further, there are real and legitimate differences between actual cash value and replacement cost values and the reasons for having both within a policy, if only those acceptable differences were better explained up front.

Some of the issues—indeed many, at this point—highlight the dated notions of coverages still being sold by insurers in this country. Living expenses and business interruption coverage being triggered by physical damage, contingent business interruption being triggered by a variety of factors unrelated to the insured, civil authority coverage being wholly inadequate in duration, loss documentation practices not keeping pace with the electronic age, and other realities of today's typical insurance policy simply are outdated and need to be rethought in order to meet the needs of the twenty-first century insured.

Language in policies, clarity and relevance of coverages, and mutual expectations of insurers and insureds are all issues that need to be addressed. In many ways, public insurance adjusters are referees in the fight over those expectations, played out in the claims process, and what those expectations were initially going into the insurance relationship. Also, those expectations need to be memorialized in policy documents that are not only easy to understand but also delivered in a timely fashion; the notion of contract certainty, a long-held tenant of professional insurance conduct in Europe and elsewhere for decades, still eludes the marketplace in the United States.

One simple way to lend clarity and transparency into the claims process is to better educate the insured public as to the respective roles of the players with whom they will invariably come in to contact during the underwriting and claims processes. Let's have the public, once and for all, understand:

• That a broker works for them but an agent works for a carrier;

• That an independent adjuster is not independent at all and largely works on behalf of insurers, while a public adjuster works for claimants only;

• That business interruption coverage oftentimes means business termination in order for coverage to attach to a loss;

• That claims should only be handled by licensed public insurance adjusters and not by contractors pretending to be qualified in this specialized profession; and finally,

• That all insurance policies are contracts for the exchange of economic consideration, and there must be some relevance between the premiums charged and the economic security that is expected in return.

If we start with just these simple concepts, we will all move the objective of understanding insurance forward, and from there we can then tackle the more complex issues that we know are still vexing us in the claims process and throughout insurance.

This leads me to one last, albeit more complicated, concept that deserves attention given the context of Sandy as a coastal storm: the hurricane deductible.

There is growing acrimony over the determination to treat Sandy as something other than a hurricane and prohibit the imposition of hurricane deductibles upon insureds. In the view of the National Hurricane Center and the National Weather Service, Sandy was not a hurricane at landfall, and hadn't been a hurricane for at least 24 hours prior thereto. Also, sustained wind speeds did not allow for many other hurricane deductibles to be triggered. Thus, the decision by insurance regulators up and down the coast was correct, technically, legally, and contractually. Insurers, however, in addition to threatening higher rates and curtailed coverages are also considering a challenge to the meteorological judgments of those most in the know. This present a potentially disastrous scenario for claimants who could, potentially, become the target of claw back efforts by insurers to recoup benefits paid out if it were to be found, however improbable, that Sandy was in fact a hurricane.

The politics of a storm have many believing that the "no hurricane" determination was simply meant to deliver maximum relief to affected insureds with an arbitrary decision; we believe otherwise, and some parameters must be established to minimize the opportunity for any party—regulators, public officials, insurers or even public adjusters—from moving hurricane deductibles from the category of good and effective risk financing mechanism to that of political pawn.

Thank you for your attention to the views of the leadership and members of the National Association of Public Insurance Adjusters. NAPIA remains committed to enhancing both public understanding of and strong regulatory enforcement in the insurance marketplace. NAPIA will do whatever it can to move forward the dialogue started with this hearing.