

## ***ADJUSTING CATASTROPHIC LOSSES***

HARVEY M. GOODMAN, SPPA & NEIL C. KAHN, ESQ.

### **PUBLIC ADJUSTER LICENSING**

As of this date, forty four (44) states and the District of Columbia either license public insurance adjusters by statute or have enacted a regulatory scheme that applies to the practice of public adjusting in that jurisdiction. Appendix A sets forth each individual state and references the statute that contains the relevant licensing language for public insurance adjusters. To anticipate a question, those states that do not currently license public adjusters are Alabama, Alaska, Arkansas, South Dakota, Virginia and Wisconsin.

While the statutory framework for licensing varies to some degree in various states, it is noteworthy that on October 14, 2005, the National Association of Insurance Commissioners (NAIC) adopted the Public Adjuster Licensing Model Act (the Model Act). The Model Act contains the following language defining a public adjuster:

*“Public adjuster” means any person who, for compensation or any other thing of value on behalf of the insured:*

- (1) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of a claim for loss or damage covered by an insurance contract;*
- (2) Advertises for employment as an public adjuster of insurance claims or solicits business or represents himself or herself to the public as an public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property;*  
*or*
- (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.*

This definition is materially similar to that set forth in most state statutes. It serves as a good general definition of the public adjuster and can be summarized as the representation of policyholders in the measurement, presentation and adjustment of first party property damage insurance claims.

These statutory and regulatory schemes govern the rights, obligations and duties of the public adjuster in routine matters as well as losses incurred during a catastrophic event. However, it should be noted that some states have additional provisions that govern in the event of a declared state of emergency or catastrophe.

An illustrative case study is the evolution of the public adjusting statute in the State of Mississippi, which notably is a state that has experienced many catastrophic events and declared emergencies, mostly in the form of major hurricanes that have made landfall in the Gulf of Mexico in recent years.

As of August 29, 2005, the date Hurricane Katrina made landfall, Mississippi had no statute and regulation addressing public adjusting. This void led to much confusion in not only the insurance industry, but among consumers and policyholders. The devastation in Mississippi from Hurricane Katrina led to a groundswell of inquiries to James Hood, the Attorney General of Mississippi. On September 8, 2005 Attorney General Hood, in a published email acknowledged the need for Mississippi residents to have insurance claim expertise available in connection with their Katrina claims. Specifically, he stated:

*“Our Insurance Commissioner has taken the position in the past that since we have no statute recognizing public adjusters, they are engaging in the illegal practice of law. The Mississippi Bar apparently takes the same position.*

*I, personally, want to see the storm victims have some independent, learned advice in dealing with adjusters for insurance companies. However, there are apparently some old Mississippi Supreme Court opinions and Attorney General opinions that state that negotiation with an insurance adjuster is the practice of law.*

*I am looking for some middle-ground such as requiring that the independent adjusters be working with an attorney. I'll let you know when we reach a final decision.”*

Shortly thereafter, on September 14, 2005 an Official Opinion was issued by the Attorney General of Mississippi addressing the status of public adjusting in the aftermath of Hurricane Katrina. A full copy of that Official Opinion can be found at [Appendix B](#). The key questions asked were:

- (1) Can public adjusters perform public adjusting services in the State of Mississippi where there is no statutory scheme for recognizing, licensing or otherwise regulating public adjusters?
- (2) Does the Department have the authority to temporarily establish emergency guidelines governing the licensure, registration and/or activities of public adjusters in the State of Mississippi pursuant to the emergency powers granted to state agencies by the Governor under his recent Executive Order invoking Miss. Code Ann. Section 33-15-11 (Supp. 2004)?

Both questions were answered in the affirmative. However, as the emergency conditions dictated, there was not sufficient time to promulgate a full statutory or regulatory mechanism to govern the conduct of public adjusters in Mississippi. Mississippi policyholders were in desperate need of professional claims services and the Attorney General acknowledged the necessity for immediate action.

That immediate action was in the form of registration. Any person or firm seeking to conduct public adjusting services in Mississippi would have to register with the Mississippi Department of Insurance on a form issued pursuant to the provisions of the Attorney General's directive. That form stated that, "Due to the disaster caused by Hurricane Katrina, registration is required for all public adjusters doing business in the State of Mississippi. This registration does not require the licensing of public adjusters and is only implemented on a temporary basis to ensure the citizens of Mississippi are properly served." This extraordinary measure was deemed necessary as the need of the policyholders far outweighed the time lag that legislative and/or administrative action would inevitably require.

Specifically, the registration packet referenced emergency regulations that provided:

- (1) Public adjuster fees would be capped at seven percent (7%) of the gross insurance recovery; and
- (2) The policyholder would be granted a fourteen (14) day right of rescission with respect to an agreement the policyholder executed with a public adjuster.

The Mississippi legislature then addressed a more formal licensing statute for the first time. On July 1, 2007, the Governor of Mississippi signed into law a full licensing statute for public adjusters in Mississippi that preempted all prior opinions, regulation and registration. The provisions of the licensing statute closely mirrored the statutory scheme set forth in the Model Bill approved by the NAIC. The statutory mechanism saw no need to distinguish the various rights and obligations of the public adjuster and the policyholder when the underlying loss event arose from a catastrophic event other than to provide for an emergency public adjuster license for 90 days in the event of a catastrophe to those not otherwise licensed in Mississippi.

The provisions above, regarding fee caps and rescission rights, were modified in the statute so that the fee cap was set at ten percent (10%) and the right of rescission was reduced to five (5) days.

A similar scenario had taken place in South Carolina after Hurricane Hugo in 1989. Initially, both the bar association and attorney general's office opined that public adjusters who did more than just measure damage may be practicing law. This position resulted in the restriction of public adjusting activities. In addition, a similar analysis was undertaken to explore restricting the insurer's right to retain independent adjusters representing the carriers. Notwithstanding these efforts, litigation ensued and when all the dust cleared, laws allowing the practice of public adjusting in South Carolina were finally enacted on June 14, 2000. That statute contained the following definitions:

(1) "Public insurance adjuster" means any individual who, for salary, fee, commission, or other compensation, engages in public adjusting and who is licensed under Section 38-48-20. A public insurance adjuster is not an attorney licensed to practice by the South Carolina Supreme Court who adjusts insurance losses in the course of the practice of law. A public insurance adjuster is not an adjuster representing an insurer and is not licensed in accordance with the provisions of Chapter 47.

(2) "Public adjusting" means investigating, appraising or evaluating, and reporting to an insured in relation to a first party claim arising under insurance contracts, that insure the real or personal property, or both, of the insured. Public adjusting does not include acting in any manner in relation to claims for damages to or arising out of the operation of a motor vehicle. Public adjusting does not include any activities which may constitute the unauthorized practice of law. Nothing in this chapter shall be construed as permitting the unauthorized practice of law.

When Hurricane Andrew ravaged southern Florida in 1992, the need for licensing out of state public adjusters became critical. Florida had regulations in place at the time for licensing only in-state public adjusters. Even with that residency limitation, the Department of Insurance could not handle the sudden demand for licensing. The huge number of claims attracted a large number of public adjusters. After pressure from the National Association of Public Insurance Adjusters (NAPIA), legislation was passed for the emergency licensing of out-of-state public adjusters. Unfortunately, in trying to correct the problem, the Florida Department of Insurance made the process more difficult by restricting licenses to those public adjusters that were sponsored by a Florida insurance agent, an independent adjuster or an insurance company executive. In addition to being sponsored, a public adjuster also had to post a bond, and agree to work under the supervision of a currently licensed Florida public adjuster, as conditions for emergency licensing. Processing the emergency licenses took months. Many public adjusters believed that assisting the insured was permissible if the paperwork for emergency licensing was in process with Department of Insurance. There were a few instances where public adjuster's were

administratively penalized for adjusting claims during the period in which emergency license applications were pending.

Three years later when Hurricane Opal hit the west coast of Florida, the same emergency licensing for out of state public adjusters was in place. However, this time, public adjusters were arrested for adjusting claims. Not surprisingly, this led to litigation based on the constitutionality of the licensing process, especially as it prohibited non-resident public adjusters. Eventually, after a lawsuit was filed against the state, Florida eliminated the residency requirements so that out of state residents could obtain public adjusting licensing. That is the current state of the law in not only Florida but all states that license public adjusters.

The role of the public adjuster, company adjuster and independent adjuster can be very confusing to those who are not regularly involved in the claims process (most notably the insured). Many state statutes require a very specific disclosure to append to every contract between a policyholder and the public adjuster. This disclosure reads as follows:

#### REGARDING THE CLAIM PROCESS

*(1) Property insurance policies obligate the insured to present a claim to the insured's insurance company for consideration. There are three types of adjusters that could be involved in that process. The definitions of the three types are as follows:*

- (a) "Company adjusters" means the insurance adjusters who are employees of insurance companies. They represent the interests of the insurance companies and are paid by the insurance companies. They will not charge the insured's fees.*
- (b) "Independent adjusters" means the insurance adjusters who are hired on a contract basis by insurance companies to represent the insurance companies' interests in the settlement of claims. They are paid by the insurance companies. They will not charge the insured's fees.*
- (c) "Public adjusters" means the insurance adjusters who do not work for any insurance companies. They work for insured's to assist in the preparation, presentation and settlement of claims. The insured's hire them by signing contracts agreeing to pay them fees or commissions based on a percentage of the settlements, or other method of compensation.*

#### **Role of and Issues Confronting the Public Adjuster in the Wake of a Catastrophe**

The role of the public adjuster hired to adjust a catastrophic claim is not significantly different from the role of the public adjuster hired to adjust a claim in non-catastrophic losses. What is very different are the circumstances surrounding the actual hands on, roll up your sleeves day-to-day claim activities following a catastrophe. While most major property damage losses occur at a single location, a catastrophe often causes wide spread damage across an entire region or state.

Under these circumstances, the public adjuster is confronted with a multitude of logistical issues. Each of these results in unique challenges in the actual handling of claims, as well as organizing the overall response operation.

The challenges initially relate to the availability of resources such as communications, electricity, transportation, lodging and food. Each of these, are often very limited if not totally unavailable in the wake of a mass catastrophe.

Twenty years ago, during catastrophe operations, business would generally be conducted face to face. Few professionals had cell phones and even if they did, roaming was virtually non-existent. Fax machines were considered a luxury and email was a thing of the future. Accordingly, the main source of communication was a landline-based telephone. However, in the wake of a catastrophe, telephone service is often very limited, if available at all, due to damage to the electrical and telephone service infrastructure. Typically, it would take several weeks to restore power and telephone service. Communication at any level was quite difficult during the early and very critical stage of a catastrophe operation.

Fortunately, modern technology has mitigated these communications problems. When Hurricanes Charley, Frances, Ivan and Jeanne struck Florida in 2004, portable devices with email capability running on cellular networks, was the norm. Communication was now possible with relative speed and ease. Interruptions by storm damage were brief as cellular service, email transmission and other critical services were placed back on line within a very short period of time.

However, there remain other major difficulties which plague the contemporary cat adjuster. Food, water, lodging and transportation are often very scarce. Essential personnel such as insurance adjusters, contractors, agents and others who are crucial to the adjusting process, either cannot physically get to the loss site for days or weeks, or when they do are often overwhelmed with multiple losses to handle. The result is very little attention, if any, can be given to any specific loss. The limited availability of contractors to perform emergency clean up and stabilization services makes loss mitigation efforts quite difficult. Many losses are significantly exacerbated because of the difficulty of engaging timely loss mitigation efforts.

These factors are conducive to increasing the loss exposure faced by the insurers for property damage and business interruption. They also adversely affect the insured by making it difficult to restore the physical damage and delaying the resumption of business operations. This is the reality that a public adjuster faces in the wake of a mass catastrophe. The test of a highly professional public adjuster is how well he or she can deal with and manage these adverse circumstances, so as to best advise the client and assist them in protecting their business interests.

## **Evaluating, Measuring and Documenting the Loss**

In 2004, Florida experienced an unprecedented series of hurricanes making landfall within weeks of each other. On August 13<sup>th</sup>, Hurricane Charley devastated the west coast of Florida. Three weeks later, on September 5<sup>th</sup>, Hurricane Frances crossed from the east coast to the west coast, wreaking havoc in its path. Two weeks after Frances, Hurricane Ivan struck the Florida panhandle on September 21<sup>st</sup> and four days after Ivan, on the 25<sup>th</sup> of September, Hurricane Jeanne crossed Florida on a track similar to Charley's. In many instances, businesses with multiple locations in Florida were trying to deal with catastrophic losses only days apart, at different locations, all within the same general region. Many properties sustained damage by one hurricane and then again by a subsequent hurricane. Managing disasters of this magnitude, especially with the aforementioned logistical impediments, required a tremendous amount of time and close oversight. While many in the industry often use military metaphors to describe cat operations, Florida in 2004 required organization and logistical support that frankly merited a military approach.

Fully measuring and documenting all aspects of an insured loss, including the emergency repairs and loss mitigation, building damages, contents and/or inventory losses, as well as business interruption losses, is significantly more difficult during a catastrophe. However, regardless of the fact that there was a major catastrophe, the insurance policy still requires that certain conditions be satisfied by the policyholder. Comprehensive, detailed estimates and inventories of the affected property are required. Any and all documentation to support or prove the loss must be compiled and submitted with the claim. The insured is still obligated to evaluate its business interruption loss and provide to the carrier detailed calculations of its loss, as well as financial documents and records that support the measured loss.

The question is then, how is the task of complying with policy requirements achieved under these very difficult and challenging circumstances? The first phase of handling a loss typically involves loss mitigation efforts in the form of emergency clean up and stabilization of the damaged property. Often it is necessary to use a variety of contractors for emergency services, at a time when those same contractors are overwhelmed with work and are having difficulty obtaining supplies, materials and equipment. After the necessary loss mitigation efforts are completed, the next step is to prepare the necessary estimate of structural damage and inventories of damaged business and personal property. As indicated, these tasks require trained and experienced personnel and can be very time consuming at a time when the availability of such professionals is very limited. To further complicate matters, it is possible that weeks will pass before the insurer's representatives will have the opportunity to visit the loss site to perform their inspections and due diligence. Meanwhile, the insured will be anxious to minimize the business interruption losses and resume operations as well as secure partial payment to assist funding these mitigation efforts.

While there are many post catastrophe variables that the public adjuster cannot control, such as loss of electric power, water and telephone services, there are proactive steps that can be taken to be better prepared to deal with vital personnel requirements. With respect to contractors, establishing relationships and strategic partners throughout the country provides the public adjuster with a pool of resources that can be “imported” into the catastrophe area. These contractors can often ship in the necessary materials and equipment that will be required for not only restoration work, but for initial emergency clean up and stabilization services. The public adjusting firm should maintain a sufficient staff of adjusters who can be quickly mobilized to travel to the affected areas. They should also have access to vendors or staff that can assist with personal property inventories and loss of income measurement.

In dealing with hurricanes, one advantage is that meteorological information is available to reasonably predict where and when a hurricane will make landfall. With this information, advance reservations for hotels and rental cars can be made in areas that are peripheral to the landfall area and thus will still be operational after the storm passes through. Dealing proactively with personnel and lodging issues will significantly enhance the public adjuster’s ability to properly and effectively handle the losses which are sustained by its clients.

With respect to the critical need to fully measure and document the loss, that process is generally more effective where the insured, through its public adjuster, works jointly with insurance company representatives. Having a team quickly in place after a disaster and working jointly with the insurance company adjusters and contractors, helps create and maintain momentum throughout the adjustment process. Frequent communication between all involved parties will foster an environment conducive to a fair and expeditious settlement. Where the insurance adjuster is not readily available, it is imperative that the conditions at the loss site be very thoroughly documented by means of photographs, video, moisture mapping documents, etc. Salvage and damaged property should be secured and stored so that it can be inspected at a later date when the adjuster arrives on site. Special accounts should be set up to track and accumulate all loss related expenditures.

While the initial focus in dealing with a major loss is on the property damage, it is imperative that the potential business interruption exposure be evaluated shortly after the loss occurs. This is necessary for a host of reasons. Many decisions which are made in the early stages of the adjustment process, particularly in regard to extra expense and expense to reduce the loss, are significantly influenced by the potential loss of income. In most cases, the insured will be contemplating means to resume operations on a partial, and/or temporary basis. Depending on the type of coverage which is available under the policy, the insured may have to demonstrate that expenditures incurred to resume operations reduce the loss that would otherwise be payable. If the insured has coverage for what is known as “pure” extra expense, potential savings is not as much an issue as it is where the policy only provides for expense to reduce the loss. Under the latter coverage scenario, the short term as well as the long-term economic impact becomes a



major factor in determining whether or not loss mitigation expenditures are covered. In addition, the receipt of partial funding from the insurance company to cover continuing expenses and lost profits is incumbent on providing projections or forecasts of lost earnings, if even on a preliminary basis.

Accordingly, it is imperative to have a team of well-qualified accountants with experience in the handling of business interruption claims on site immediately after the loss to commence with the necessary loss valuation procedures. It is also necessary to carefully review the policy to determine how lost revenues and earnings are projected in the aftermath of a mass catastrophe. While it may seem counterintuitive, a hurricane can actually create favorable conditions for certain types of businesses. For instance, take a hotel which historically has 30% occupancy in the month of the storm. However, as the result of the storm, there is a tremendous demand for housing from emergency responders, contractors and adjusters, as well as people displaced from their homes. One has to look to the policy to determine if the loss measure for the destroyed hotel will be based on the historical 30% occupancy rate or based on full occupancy that would have been achieved had it been able to operate. There are many similar issues which distinguish the manner in which a loss is measured after a mass catastrophe that an experienced public adjuster will be cognizant of and therefore able to insure the proper loss measure for its client.

### **ROLE OF THE INDEPENDENT ADJUSTER**

Many insurance companies maintain limited staff adjusters to respond to claims filed under its policies. In the event of a major catastrophic loss, the insurer will assign the claim to an independent adjuster or adjusting firm. As the name implies, the independent adjusters are separate companies and will often be retained to adjust losses for many different insurance companies. Some policies actually designate an independent adjuster to handle any claims that arise under that policy. It should be noted that the independent adjuster represents the insurance companies generally and do not represent the policyholder.

The independent adjuster will be confronted with many of the same logistical issues that confront the public adjuster such as scarcity of housing, transportation and other vital resources. However, the independent adjuster is motivated to see to it that proper loss mitigation measures are taken and they will expect to receive complete and proper documentation of the loss so that they can generate reports which are required by its principal and make recommendations for payments and claim settlements. Some of the most successful and expeditious loss settlements occur when the independent adjuster and public adjuster work through the loss adjustment process in tandem with close and frequent communications. Conducting joint inspections of the property and striving to identify and resolve issues as they arise is highly conducive to achieving a prompt and equitable settlement for all parties concerned. Large losses in a catastrophe situation require even a higher level of joint cooperation between the public adjuster and insurance company adjusting team.

## **MARKET MEETINGS**

Disasters often result in multi-million dollar claims. Insured losses in that range will generally have coverage through several carriers, each providing a “layer” of insurance or often sharing a layer of coverage. The group of insurers in a layered insurance program is commonly referred to as the “market”. Holding regular market meetings, with all relevant parties and their representatives present will facilitate the adjustment of a catastrophic loss at each step of the process.

Multiple adjusters, representing multiple insurance companies, can significantly complicate and slow down the adjustment process. An all too frequent issue is where the initial layer of coverage fails to settle, thus delaying the excess layers from paying their share of the loss. Often, excess layer carriers may not be fully engaged in the adjustment process as they assume that the loss will not reach their level. This is typically due to the fact that they may not be fully cognizant of the damages their insured sustained and therefore do not pay proper attention to the loss adjustment process. There may be conflicting language and coverage definitions between the various policies and so on. These scenarios are not uncommon in large, complex losses following a catastrophe. Involving the entire market in regularly scheduled meetings helps eliminate or prevent many of these issues and allows the process to be cohesive and coordinated rather than a series of separate claims adjustments.

Market meetings may involve only the insurer’s representing the various layers which are immediately engaged in the loss. Alternatively, a market meeting may include all the carriers in the insurance programs along with its representatives and consultants. In any event, meeting on a regular basis with all the parties involved with a catastrophic loss adjustment, allows all parties with a stake in the claim to be fully aware of the details of the claim and issues as they arise. Regular communication between all the parties in this manner will minimize unnecessary issues and delays and thus facilitate the adjustment process.

In closing, we bring to your attention an axiom in the insurance claims business, which states that “all claims will ultimately be settled”. All too often, the eventual settlement is marked by prolonged frustrations and delays, acrimony between the parties and often the need for alternative forms of dispute resolution. However, when all parties work together in the spirit of cooperation, both adverse logistical and loss adjustment issues can be amicably resolved, so as to achieve an expeditious, harmonious and equitable settlement, which is the true purpose of insurance.

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This white paper is provided for general information and is not intended to replace professional insurance, legal and/or financial advice for specific cases.

## **APPENDIX A**

## PUBLIC ADJUSTER LICENSING STATUTES

STATE	CITATION
Alabama	DOES NOT LICENSE
Alaska	DOES NOT LICENSE
Arizona	Ariz. Rev. Stat. Ann. §20-321 et seq.
Arkansas	DOES NOT LICENSE
California	Cal. Ins. Code §15006 - 15032
Colorado	Colo. Rev. Stat. §10-2-417
Connecticut	Conn. Gen. Stat. §§38A-723, 38a-769
Delaware	Del Code Ann. tit. 18, §1750 et seq.
District of Columbia	D.C. Code §§31-1631.02(5), 31-1631.03 (West 2008)
Florida	Fla. Stat. §626.851 et seq.
Georgia	Ga. Code Ann. §33-23-1(a)(13)
Hawaii	Haw. Rev. Stat. §§431:9-101, 431:9-105
Idaho	Idaho Code Ann. §§41-5802(6), 41-5803
Illinois	215 Ill. Compo Stat. 5/512.52(b), 512.53
Indiana	Ind. Code §§27-1-27-1(a), 27-1-27-2
Iowa	Iowa Code §191-55.2
Kansas	KSA 2010 Supp. 40-5501-40-5519
Kentucky	Ky. Rev. Stat. Ann. §§304.9-070, 304.9-080
Louisiana	La. Rev. Stat. Ann. §§1210.91, 1210.92(7), 1210.93
Maine	Me. Rev. Stat. Ann. tit. 24, §1402
Maryland	Md. Code Ann., Ins. §10-401 (d)(1), 10-410
Massachusetts	Mass. Gen. Laws ch. 175, §§162, 172
Michigan	Mich. Compo Laws §500.1222
Minnesota	Minn. Stat. §§72B.02(6), 72B.03
Mississippi	Miss. Code Ann. §§83-17-501, 83-17-505

STATE	CITATION
Missouri	Mo. Rev. Stat. §§325.010(2), 325.015
Montana	Mont. Code Ann. §§33-17-102(19), 33-17-301
Nebraska	Neb. Rev. Stat. §§44-2607, 44-2614
Nevada	Nev. Rev. Stat. §§684A.030(2), 684A.040
New Hampshire	N.H. Rev. Stat. Ann. §§402-D:2, 402-D:3
New Jersey	N.J. Stat. Ann. §§11:1-37.1-3
New Mexico	N.M. Stat. §§59A-13-2(A)(1)(a), 59A-13-3
New York	N.Y. Ins. Law §§2101, 2108
North Carolina	N.C. Gen. Stat. §§58-33-5, 55-33-10
North Dakota	N.D. Cent. Code §§26.1-26.02(4),
Ohio	Ohio Rev. Code Ann. §§3951.01(B),3951.02
Oklahoma	Okla. Stat. tit. 36 §§6202(4), 36-6207
Oregon	Or. Rev. Stat. §744.505
Pennsylvania	63 Pa. Stat. §§1601, 1602(a)
Rhode Island	R.I. Gen. Laws §§27-10-1(2), 27-10-3
South Carolina	S.C. Code Ann. §§38-48-10(1), 38-48-20
South Dakota	DOES NOT LICENSE
Tennessee	Tenn. Code Ann. §§56-6-902(8)(A), 56-6-903
Texas	Tex. Ins. Code Ann. §§4102.001 (3), 4102.051
Utah	Utah Code Ann. §§31A-26-102(5), 31A-26-201
Vermont	Vt. Stat. Ann. tit.8, §§4791(4), 4793
Virginia	DOES NOT LICENSE
Washington	Wash. Rev. Code §§48.17.010(1)(b),48.17.060
West Virginia	W. Va. Code §§33-12B-2(b), 33-12B-4
Wisconsin	DOES NOT LICENSE
Wyoming	Wyo. Stat. Ann. §26-9-220(a)

## **APPENDIX B**

Sep. 14. 2005 4:13PM

No. 0660 P. 6

Kubisoff  
9-12-05



**GEORGE DALE**  
Commissioner of Insurance  
State Fire Marshal

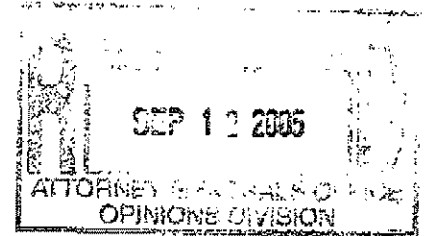
**LEE HARRELL**  
Deputy Commissioner of Insurance

**STATE OF MISSISSIPPI**  
Mississippi Insurance Department

501 N. West Street  
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2005-0481

September 12, 2005



Honorable Jim Hood  
Attorney General  
5th Floor, Gartin Justice Building  
Jackson, MS 39201

Re: Public Adjusters

Dear General Hood:

The Mississippi Department of Insurance ("Department") has received numerous inquiries from persons who are licensed as public adjusters in other states, or who are otherwise duly authorized to operate as public adjusters in other states, and who desire to assist in Mississippi with the review of damage on the gulf coast due to Hurricane Katrina.

Pursuant to Miss. Code Ann. § 83-17-401 et seq. (Rev. 1999), the Department has the authority to regulate adjusters, who are defined as persons who adjust losses on behalf of either an insurance company, a self-insured, or any person who supervises the adjustment of claims [§ 83-17-401(a)]. Unlike the adjusters licensed and regulated pursuant to § 83-17-401 et seq., public adjusters generally assess and adjust losses on behalf of insureds, and there is no statutory scheme in Mississippi for recognizing, licensing or otherwise regulating public adjusters.

To enable the Department to adequately respond to the numerous inquiries it has received concerning this matter, I request that you provide your opinion with respect to the following:


- (1) Can public adjusters perform public adjusting services in the State of Mississippi where there is no statutory scheme for recognizing, licensing or otherwise regulating public adjusters?
- (2) Does the Department have the authority to temporarily establish emergency guidelines governing the licensure, registration and/or activities of public adjusters in the State of Mississippi pursuant to the emergency powers granted to state agencies by the Governor under his recent Executive Order invoking Miss. Code Ann. § 33-15-11 (Supp. 2004)?
- (3) If the answer to number (2) above is in the affirmative, does the Department have the authority to limit the compensation received by public adjusters in this State?

- (4) Would the practice of public adjusting constitute the unauthorized practice of law in this State?

Your assistance in this matter will be greatly appreciated.

Sincerely,

GEORGE DALE  
COMMISSIONER OF INSURANCE

BY:   
Lee Harrell  
Deputy Commissioner



STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

September 14, 2005

Honorable George Dale  
Commissioner of Insurance  
Post Office Box 79  
Jackson, MS 39205

Re: Public Adjusters

Dear Commissioner Dale:

Attorney General Jim Hood received your request for an Official Opinion and assigned it to me for research and response. In your letter of request, a copy of which is attached hereto and incorporated herein by reference, you pose the following questions regarding the authority of the Mississippi Department of Insurance ("Department"):

- (1) Can public adjusters perform public adjusting services in the State of Mississippi where there is no statutory scheme for recognizing, licensing or otherwise regulating public adjusters?
- (2) Does the Department have the authority to temporarily establish emergency guidelines governing the licensure, registration and/or activities of public adjusters in the State of Mississippi pursuant to the emergency powers granted to state agencies by the Governor under his recent Executive Order invoking Miss. Code Ann. § 33-15-11 (Supp. 2004)?
- (3) If the answer to number (2) above is in the affirmative, does the Department have the authority to limit the compensation received by public adjusters in this State?

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September 14, 2005  
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(4) Would the practice of public adjusting constitute the unauthorized practice of law in this State?

In response to your first question, the answer is "yes". Mississippi currently regulates "adjusters" under Section 83-17-401 et seq., of the Mississippi Code, but has no statutory provisions regulating the activities of "public adjusters." "Adjuster" is defined in Section 83-17-401(a) as any person who "...investigates or adjusts losses on behalf of either an insurer or a self-insured, or any person who supervises the handling of claims...". "Public adjusters" are persons who represent insureds, not insurance companies. "Public adjusters" perform various casualty loss-related activities on behalf of insureds, including estimating losses, preparing inventories, assisting insureds in preparing proofs of loss, delivering documentation to insurance companies, and supporting the insured's property-damage valuations.

In response to your second question, the answer is "yes". Section 33-15-11(c)(1) of the Mississippi Code empowers the Governor to suspend the provisions of regulatory statutes prescribing the procedures for the conduct of state business. Section 33-15-11(c)(4) of the Mississippi Code authorizes the Governor to exercise powers as necessary to promote and secure the safety and protection of the civilian population. Section 33-15-11(b)(9) of the Mississippi Code provides that the Governor can delegate these emergency powers and may provide for the sub-delegation of such powers.

By Proclamation dated August 26, 2005 the Governor declared a state of emergency in areas of the State affected by Hurricane Katrina and directed that agencies of the State discharge their emergency responsibilities as deemed necessary as set forth in the State of Mississippi Emergency Operations Plan and Executive Order No. 653, dated November 16, 1990. By Proclamation dated September 2, 2005, the Governor declared a state of emergency to exist for the entire State and again directed agencies of the State to discharge their emergency responsibilities as deemed necessary as set forth in the previously mentioned plan and executive order. Executive Order No. 653 specifically provides, *inter alia*, that the Department of Insurance is authorized and directed to provide disaster assistance support.

We have been advised that thirty-eight other states have enacted statutes regulating the activities of public adjusters and that some states have enacted provisions limiting the maximum fee that can be charged for such services. It is our further understanding that, during the aftermath of Hurricane Hugo, the state of South Carolina implemented an emergency registration of public adjusters, prior to the enactment of legislation providing for such registration. In addition, the state of Florida issued emergency licenses to reputable public adjusters during the aftermath of Hurricane Andrew, even though Florida had and continues to have a comprehensive statutory licensing scheme.

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In light of the authorities cited above and the need for Mississippi policy holders to have access to the services of reputable public adjusters due to the damage caused by Hurricane Katrina, it is our opinion that the Department is authorized to establish emergency guidelines to provide for the registration of public adjusters during the period in which the state of emergency is in effect. Any such emergency guidelines may take effect immediately.

In response to your third question, the answer is "yes". The emergency authority referred to in our answer to question (2) above would include the authority to limit fees that may be charged by public adjusters working in Mississippi during the state of emergency. We have been advised that the state of Florida recently adopted an emergency rule to protect victims of Hurricane Katrina by capping public adjuster's fees and taking other protective measures. If the Department determines that similar guidelines are necessary in order to protect the public, the Department would have authority to adopt same. In addition, the Department would be authorized to charge a reasonable registration fee to offset the administrative cost of administering these guidelines.

In response to your fourth question, the answer would depend on the particular facts and circumstances and would have to be determined on a case by case basis.

**OFFICIAL OPINION**  
Section 97-3-55 of the Mississippi Code provides:

It shall be unlawful for any person to engage in the practice of law in this state who has not been licensed according to law. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished in accordance with the provisions of Section 97-23-43. Any person who shall for fee or reward or promise, directly or indirectly, write or dictate any paper or instrument of writing, to be filed in any cause or proceeding pending, or to be instituted in any court in this state, or indirectly, write or dictate any paper or instrument of writing, to be filed in any cause or proceeding pending, or to be instituted in any court in this state, or give any counsel or advice therein, or who shall write or dictate any bill of sale, deed of conveyance, deed of trust, mortgage, contract, or last will and testament, or shall make or certify to any abstract of title to real estate other than his own or in which he may own an interest, shall be held to be engaged in the practice of law. This section shall not, however, prevent title or abstract of title guaranty companies incorporated under the laws of this state from making abstract or certifying titles

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to real estate where it acts through some person as agent, authorized under the laws of the State of Mississippi to practice law; nor shall this section prevent any abstract company chartered under the laws of the State of Mississippi with a paid-up capital of Fifty Thousand Dollars (\$50,000.00) or more from making or certifying to abstracts of title to real estate through the president, secretary or other principal officer of such company.

The practice of public adjusting, as described in our response to your first question, is not *per se* the unauthorized practice of law. However, any activities which constitute the unauthorized practice of law, as described in Section 73-3-55, would be prohibited and punishable under that section.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Charles T. Rupisoff  
Special Assistant Attorney General

OFFICIAL OPINION