

# Consumer Claims

THE MAGAZINE FOR PUBLIC ADJUSTERS  
SPRING/SUMMER 2024

## Journal

# Industry Under Fire

## Smoldering California Legal Issues

### The Need for a Unified Voice

### Public Adjusters As Policy Advocates

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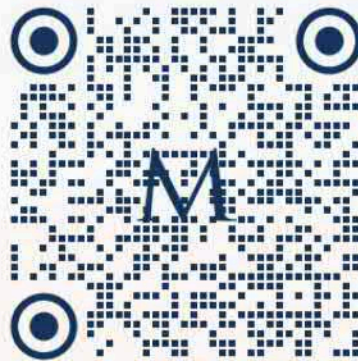
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# Consumer Claims

THE MAGAZINE FOR PUBLIC ADJUSTERS

## Journal



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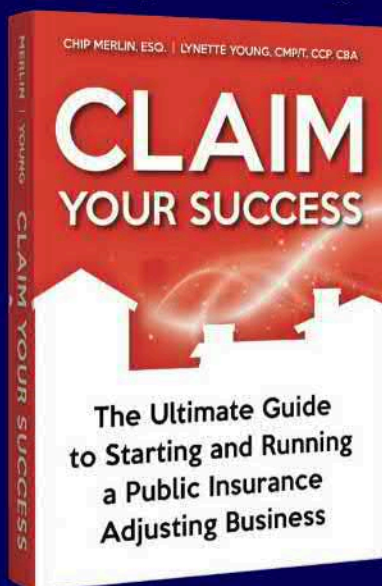
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# A message from the Past President



Greetings all of my fellow public adjusters,

Thank you for taking the time to read our magazine and attempt to make our industry better by learning from what is included in these issues. While this is my presidential message, I have come to the end of my term, and I think we've had a successful year. This year, Matt Blumkin is set to take over as the incoming president. He brings with him the host officers along with a new officer to fill-in as secretary. All of these folks, I have the upmost faith in to lead the organization in the same prestigious manner that has it's been led for many years. I encourage all of you to pay close attention to your policies as you are taking on claims. As many of you may or may not know our industry is under siege. There are many policies now that have a prohibition against public adjusters written into their policies as an endorsement. Policyholders have no idea that this endorsement exists, this prohibition also has a New York arbitration clause, which makes it impossible to fight in a court. NAPIA and the Florida Association of public insurance adjusters, have taken up a fight to fight this as a matter of antitrust, and good public policy. Well, many other associations are worried about percentage fees, what fees can be charged, etc., this clearly is the most important fight that our industry is going to face. If the carriers are successful in this language growing throughout various insurance policies, it will spell the end of public adjusting as you know it. I implore you to be involved with both your state, regional, and national associations and encourage the leader ships of those associations to join the fight with NAPIA and FAPIA.

Chris Aldrich, CPAU  
Past President

A pair of black boxing gloves is shown against a blue background. One glove is in the foreground, slightly out of focus, while the other is behind it, more in focus. The gloves have white laces and a small label on the back of the hand that says "100% GENUINE LEATHER".

# Fighting Back Effectively

**Advocating for Consumer Advocates**  
By: Nancy Dominguez



Florida has been fighting back on draconian attempts to limit or eliminate public adjusters since Hurricane Andrew devastated southeast Florida 30 years ago. We are not alone, of course, as our industry faces challenges in many states. It's easy for public adjusters to become the scapegoat at a state level for all that ails a hardening global insurance market resulting in consumers paying much more for less. We often refer to it as Shrinkflation, and we see it primarily in decreased capacity, rising premiums, and the way coverage is being allowed to diminish in policy forms at an alarming rate in states all over the country.

## Understanding A Hardening Market

Insurance premiums are increasing exponentially. In Florida, many carriers have become insolvent for a variety of reasons. Many of the reasons that Florida carriers, over the last decade, are becoming insolvent is a matter of public record. These records are referred to as "insolvency reports" or "autopsy reports". They

include reasons such as "mismanagement by officers", "fraudulent fund transfers", and "breach of fiduciary duty."

It should be noted that insolvency reports for the carriers that went under in Florida over the past two consumers. The significant increase in the cost of materials and labor has also had an understandable impact, while it is rarely discussed. All of these things are happening simultaneously and this perfect storm is often referred to in insurance company messaging as the "insurance crisis".

We've all heard the phrase, "Never let a good crisis go to waste". We all know that high-paid insurance lobbyists only remain relevant if they bring wins to their clients. In Florida, those lobbyists have delivered big wins to insurers during two special sessions in 2022 and during our regular legislative session which just ended on May 5. They have eliminated just about every consumer protection from the claim process, including the consumer protection of requiring insurers to pay for attorney fees when a

policyholder has to file a lawsuit to get paid what they were owed. One way this happened was that they began referring to every lawsuit in their messaging as "frivolous" repeatedly, and that phrase was quoted over and over again in the media. It's important for industry leaders to keep an eye on media stories related to insurance, particularly in the months prior to legislative sessions. That messaging and lobbying have resulted in insurers being given increased latitude, including statutory ACV roof payments and extra roof deductibles, as well as a taxpayer bailout to the tune of two billion dollars in reinsurance funding. More recently, the newly minted "tort reform" and civil remedy restrictions in Florida were added to the mix to convince lawmakers that all of these consumer restrictions are needed to correct a hardening market. It's very easy to blame someone, and it certainly can't be the insurers themselves, right? Like the Neimoller poem, "first they came" for the contractors, then the attorneys and most recently the public adjusters. years have not yet been published.



Meanwhile, there is a lot of blame and finger-pointing going around at a time when reinsurance rates continue to increase and the market continues to harden. We need to recognize that our industry is considered a cost driver for insurers because we make them pay more than they would like to. This, accompanied by a general lack of knowledge about insurance, makes it very easy for insurance lobbyists to target attorneys and public adjusters with stories about how we are the cause of everyone's woes. International Risk Management Institute defines a hard market as "the upswing in the insurance market cycle when premiums increase, coverage terms are restricted, and capacity for most types of insurance decreases". Factors that contribute to a hard market are economic uncertainty, market volatility, shrinking insurance capital, and decreased competition as well as catastrophic events and increased claim activity. Reinsurers are also raising rates aggressively, and that .

The insurance industry will clearly not permit this "crisis" in Florida to go to waste. Major hurricanes in the last five years that have increased claim frequency and severity have certainly not helped halt the attacks on consumer advocacy. Instead they have been used to validate the "something needs to be done" messaging intended to create additional consumer protection restrictions.

While, for now, this is a Florida story, remember, what happens in Florida doesn't stay in Florida, and the hardening market is not isolated to our state, rather it is global

## September 28, 2022 - Hurricane Ian - "Public Adjusters are Predators and Locusts"

The wrap-up smear is a political tactic where you smear someone with falsehoods and then you "merchandise it" when the media takes hold of the story giving it credibility.

Hurricane Ian was a Category 5 storm that caused more than 100 billion dollars in damage. A few days following this devastating hurricane, Florida's Chief Financial Officer came out on national television (CNN, Fox, MSNBC, etc) and warned policyholders not to sign up with public adjusters. He advised consumers to "give insurers a chance" or to "call my office" if they were having trouble with their insurer. Then he called us "locusts and predators". I will never forget the moment those words escaped his lips. All at once, the phones at FAPIA blew up, and we started to receive dozens of texts while my cell phone started ringing nonstop. Emergency meetings were called with the Board, our PR Team, and Lobby Team. It was disheartening and disappointing, particularly since some of FAPIA's finest representatives and leaders had met with CFO Patronis several times last year. Indeed, only one month before the Hurricane made landfall, our team was in Tallahassee meeting with the CFO, and we were all on good terms as FAPIA highlighted its partnership with many divisions within the Department of Financial Services to help stop fraud and bad behavior.

We later learned that 3 separate public adjusters had approached a lawmaker's

father's seriously damaged home at ground zero the day after Ian made landfall and used high-pressure sales tactics to get the older gentleman to sign with them. The lawmaker was with his father and witnessed this. When his father advised that he would like to wait to see what the insurer pays because he didn't want to pay a fee for undisputed funds, the sales tactic pivoted to the solicitation for an attorney which is illegal in Florida. The policyholder was given contracts from an attorney's office by the public adjusters who advised that he could sign with them and not have to pay a fee. This was all done in the presence of the lawmaker. The lawmaker began communicating with the CFO immediately and even shared several text message solicitations and communications from the public adjusters with him. We believe this is where the "predators and locusts" statement came from



only 2 to 3 days post-landfall. Meanwhile, hundreds of public adjusters were doing the right thing, helping people or making themselves known to people in case they needed help in the future. We began receiving reports about how insurers were trying to convince their policyholders to cancel their public adjuster contracts if they'd signed with one. We learned about a sheriff's office that was instructing people in their community not to sign up with

public adjusters because, taking their cue from the CFO, we were all “predators and locusts”. At the same time, we began receiving and processing multiple unlicensed activity reports, as well as taking calls from policyholders who were looking for help. FAPIA immediately launched a new website to help Ian victims and began running a radio ad for our new www.beclaimsart.com campaign in the affected regions. We also purchased the domain www.askoppaga.com and instructed our members not to get into defensive arguments with some people who began asking on social media, “Why would I need to hire a public adjuster?” Instead, they could answer that question by just pointing them to that website which contained objective data in response.

## December NAPIA Meeting in Boston

FAPIA had been in communication with and collaborating with NAPIA leadership almost immediately following Ian. It was important that everyone was on the same page and singing from the same hymnal. NAPIA’s leadership wanted their own lobbyist to work directly with FAPIA’s formidable lobby team, and they brought in powerhouse lobbyist Will McKinley to join us in defending the industry in Florida. Many meetings were held with Florida leadership, including the CFO, his legislative liaisons, Senate President Passidomo, and House Speaker Renner, as well as other key lawmakers.

NAPIA was kind enough to invite FAPIA to participate in their annual meeting in Boston, and I was fortunate

enough to be sent to represent our organization. While there, I received a call from attorney Stephen Bush telling me about some whistleblower insurance adjusters who he’d interviewed. He shared a YouTube video of the interviews with me, and it became immediately evident that this was going to be a big story. These videos of independent adjusters disclosing that insurers were manipulating their reports without their knowledge to reduce claim payments and leaving their names on those reports started to pick up steam. The whistleblowers then testified during the December special session on insurance in front of the Florida House Banking and Insurance Committee to make sure our lawmakers heard from them.

Nothing happened for a while, except that immediately after the special session ended, Florida’s Insurance Commissioner, David Altmaier, and the President of Citizens Property Insurance, Barry Gilway, who had both been advocating for an end to

the attorney fee consumer protection statute, left their respective roles. Altmaier resigned and now works as an insurance industry lobbyist. Barry Gilway retired, stating that “the historic reforms that we fought so hard for are now in place...”

## FLORIDA LEGISLATIVE SESSION BEGINS

### POLICYHOLDER AMBASSADORS CALLED TO ACTION

Florida’s legislative session began on March 7th. The media began picking up on the whistleblower story, and on March 22, 2023, Washington Post investigative reporter Brianna Sacks wrote the first in a series of articles entitled *Insurers slashed Hurricane Ian payouts far below damage estimates, documents and insiders reveal*. That story has been picked up by multiple news outlets all over Florida, including the Sun Sentinel, Tampa Bay Times, and several local news stations. The power of the press became clear when lawmakers, Florida Governor DeSantis and CFO Patronis received questions



from reporters about this article and questionable practices by insurers. Governor DeSantis promised an investigation and that insurers would be held accountable if they weren't doing the right thing for policyholders.

FAPIA has a political committee and a Policyholder Ambassador Program through Public Adjusters for the Insuring Public (PA4IP.ORG). This group proactively goes out to meet with their local elected officials to build relationships that can help educate them on policyholder issues while allowing lawmakers to have a local industry resource they can turn to—a constituent that they know to help educate them on the important role played by the public adjusting industry for consumers. Policyholder Ambassadors have become key to thwarting attempts to kill our industry in the past. They were called to action as soon as an anti-public adjuster "Consumer Protection" bills were filed.

## **Consumer Protection Bill Filed**

On February 27th, a bill entitled "Consumer Protection" was filed in Florida. This bill contained some important protections for consumers in a variety of areas, including post catastrophe crowdfunding. Unfortunately, it also contained a number of unnecessary and uber-restrictive items that would negatively impact the ability of public adjusters to effectively perform their job in Florida.

Among the areas of concern was a fee cap of 10 percent, as well as a prohibition of any services being provided until

after the insurance company acknowledged receipt of the public adjuster's contract. Additionally, there was a proposed 30-day "right of rescission" section for declared state-of-emergency claims that would run from the date the contract was signed rather than the date of the state of emergency.

Policyholder Ambassadors were prepared for action and briefed on all new developments. They collaborated online, preparing talking points and scheduling Zoom meetings to make sure each of their questions was addressed and that they had their marching orders. PA4IP.ORG created a web page where people could send monitored emails to state legislators expressing their concerns respectfully and professionally. Over 1,500 emails were generated to state lawmakers. Operation Phone Calls was invoked, where Policyholder Ambassadors and others in specific legislative districts were asked to contact lawmakers in relevant committees to express their concerns about the bad language. Lawmakers received hundreds of phone calls from their constituents with cogent reasons why the proposed bill needed to be revised and not passed in its current form. When it came time for the bill to be heard for the first time in committee, a group of Policyholder Ambassadors from all over the state accompanied our lobby team and FAPIA's President traveling to Tallahassee to testify in front of lawmakers. A Whatsapp group was set up so all of the Ambassadors that were traveling and who had never even met could communicate with each other in real time. They each testified specifically about individual concerns and what needed to be addressed to fix

the proposed bill. They represented our industry very well. Indeed, when it was CFO Patronis' turn to testify after the committee had already heard from the professional public adjusters, it was clear that his tone about our industry was much more tempered as he called the public adjusters in the room professionals. They all made a great impression, and their testimony in front of both the Senate and the House helped the needle to move forward.

FAPIA members have been kept abreast of committee meetings and all important developments via email, as well as via our mobile text alert system. Keeping our members informed before and after the meetings has helped our leaders remain focused on problem-solving rather than answering member questions about what is going on. We wanted to ensure they hear about developments from FAPIA FIRST!

## **What About the Worst Case Scenario?**

FAPIA's Board had a consensus vote determining that the association would be willing to take legal action in the event our efforts to mitigate the worst parts of the bill were unsuccessful. General Counsel was tasked with finding appropriate representation for a possible constitutional law battle. Our PR team prepared video assets for us in the event that negotiations broke down, and we would have to hit back hard. We also prepared our own video assets in-house, highlighting some of the media reports that were coming out. FAPIA leadership was preparing for any eventuality.

## Where Are We Now?

On March 29th, FAPIA members were invited to a live Zoom call with our lobby team, where they were brought up to speed on the current status of the bill. There was also a Legislative Roundup call on May 9th, immediately following session where more than 250 members registered to participate. Public Adjusters in Florida; more importantly, the consumers we represent, will live to fight another day as most of the terrible language in the bill was either removed or strongly mitigated. But committee weeks for the 2024 session begin in September. It never stops. FAPIA will remain vigilant and will continue to educate, promote, preserve, and protect the public adjusting industry in Florida just as we have for the last 30 years.

Another bill was also filed, garnering a great deal of attention. It's called the "Insurer Accountability" bill or SB 7052. One of the interesting highlights of this bill, in direct response to the media attention from the whistleblowers, is that it prohibits an insurer from

"...altering or amending an insurance adjuster's report without including on the report or as an addendum to the report a detailed list of all changes made to the report and the identity of the person who ordered each change. Any change that has the effect of reducing the estimate of the loss must include a detailed explanation of why such change was made."

It also prohibits the payment of bonuses by carriers who are insolvent or impaired. It was widely reported that just before one large insurer became insolvent earlier this year, hefty bonuses were paid to its executives.

A word of advice to the other state and regional associations that are looking out for our industry in other states: FAPIA has had the infrastructure and tools set up to safeguard the industry in Florida for many years. This is not our first time at the rodeo, and this won't be our last. We encourage you to begin building the infrastructure, as well as those important relationships with elected officials, and tell your story about the important work you do, as much as possible.

## Framing the Story of Us

It is essential for our industry leaders to be the ones framing the message about our industry in a positive light, at all times. While it is also wise to recognize that while bad actors do exist, this should never be the primary message. Our industry does not need to concentrate on messaging related to bad actors, other than to take a stand against anyone who would harm policyholders. We have plenty of people taking care of making us look bad already. Instead, public adjusters should be using their platforms to tell a good story about the important role we play and the difference we can make for a homeowner, local businesses, and the community when we help them recover financially from insured losses. The truth is, the public adjusting industry will never be able to match the political donations made by the insurance industry. For example, CFO Patronis reportedly received \$2 million in donations from the insurance industry. That having been said, we do have a better story to tell. It's incumbent upon our industry to always be the good guys and to tell that story not through the eyes of a public adjuster necessarily, but rather through the eyes of your policyholder clients.

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# Smoldering California Legal Issues

by Rolf Eidbo, CFM

CAPIA President

Photo by Paul Bulat on Unsplash

Growing up, we all remember an old children's rhyme. *"Sticks and stones may break my bones, but words shall never hurt me."* Nowadays, we need to affirm our pronouns so as not to hurt anyone's feelings, but that's not all. Words do change the meaning of policies and do hurt insureds. Insurance companies can use restrictive language, eliminating the insured's fundamental rights via insurance policies.

California currently has no significant issues on our state legislative agenda. Two issues we are concerned with, and one may have a domino effect on the insured public nationwide. Our first agenda item is that current law has eliminated the appraisal option from wildfire claims for insureds. They give the carriers an upper hand when and where appraisals may be compelled. The second agenda item is proposed revisions to public adjuster's contracts. The California Department of Insurance wants all public adjusters to affirm in their contracts how and from what point they will be paid on monies received from insurance companies.

**Wildfire Appraisals** – United Policyholders acknowledges *"that there are many conversations going on across the country on the topic of repairing aspects of the appraisal process that are broken."* - all in search of a model law. Amy Bach promotes *"a one-sided right to reject appraisal (consumer only) should be part of the platform."*

California Association of Public Insurance Adjusters – 'CAPIA' represents member firms employing over one-third of all California Public Adjusters, having served thousands of insureds over the past decade. Together, we support these necessary changes in this law and welcome the opportunity to be a part of any discussion on California's appraisal process. The recent law changes have made many of the insured's wildfire recovery efforts difficult. Kenneth Crown, SPPA, AI-Greenspan International, and Secretary/Treasurer of CAPIA leads the charge and believes this topic to be one of the most severe changes in recent California law changes, which harms CA insureds. Two specific appraisal sentences in the new CA law that CAPIA takes issue with are;

- **"Where the request is requested."** *The previous law allowed either party to request an appraisal, which was mandated. Now either party can "opt" out should they want to. This option gives the insurance companies leverage, which comes to the insured's detriment. At best, the language is ambiguous.*
- **"In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company, but shall not be compelled."** *This one sentence could eliminate the appraisal option for most insureds. Carriers will hold their ground and force disagreements into the courts, where the expenses can become too costly for many insureds.*

In a recent article published in the CAPIA Courier, written by Joel Gumbiner, Esq. – Williams & Gumbiner, Joel wrote, *Now that it seems more insurance carriers are using the appraisal clause to settle their claims when a dispute arises, one would think everyone could get*

on the same page about how and who can demand appraisals. But that's not the case. Federal law and state law currently do not coincide.

Since language was added to Insurance Code Section 2071 in 2001, to make appraisal voluntary in claims arising out of 'government declared disasters,' we have all understood that appraisal was unavailable on wildfire claims. Well, a little-known case decided by a federal court judge this past summer may have changed all that.

A federal judge in *Pollock v. Fed. Ins. Co.* (2022) No. 21-CV-09975-JCS, 2022 WL 2756669 ordered Federal Insurance Company (Chubb) to appraise on a Glass Fire claim. How did the Court order Chubb to appraisal despite this seemingly clear language in the Insurance Code? The simple answer is that the above language in Section 2071 was not incorporated into the Appraisal provision of the Chubb policy. Therefore, that exception to appraisal was held not to apply, and appraisal was mandatory, not voluntary.

Joel continues to break down the Pollock Decision into three components:

**1. The Pollock Decision is not law:** The first thing to note is that the Pollock decision is merely an opinion written by a Federal District Court Judge – a magistrate judge actually. The Federal District Court is a trial court. While federal trial judges' decisions are published, those published decisions do not have the force or effect of law. They are just opinions. But that doesn't mean that other federal judges or even California Superior Court

judges won't give deference to the opinion. It is well-reasoned and supported. Federal Judges are respected. The opinion, though not law, certainly has gravitas.

**2. Appraisal Provision of the Policy v. Appraisal Language of Ins. Code 2071:** Insurance Code Section 2071 is California's minimum standard fire policy and sets out what the coverage's every fire (property) insurer in California should include in its policy. Everyone knows that. The following language was added to the Appraisal provision of Section 2071 in 2001. **In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or his company but shall not be compelled.** Where the Appraisal provision of the insurance policy does not include the 'government declared disaster' language above, which few do, that is where Pollock comes in.

**3. Finally...The Pollock Case and Reasoning That The 'Government-Declared Disasters' Exception Cannot be Read into the policy.**

**Bottom line** -- where the Appraisal provision of the policy does not incorporate the 'government-declared disaster' exception to the Appraisal mandate, then the law presumes the insurer intended to omit it and provide the insured with greater coverage than just the 'minimum.' Where the policy does not include the exception, and the insured demands appraisal, it would run afoul of the statutory intent

of the code, as it has been interpreted by the courts for decades, to allow an insurer to rely on the omitted language to the insured's detriment.

**Conclusion:** Appraisal is a valued and valuable remedy for insureds, and public adjusters, who believe the claim is not fairly measured and paid by the insurer. For the hundreds, maybe thousands, of claims still pending in California arising out of any of the massive wildfires in Napa/Sonoma, Los Angeles, Lake Tahoe, or elsewhere, do not be afraid to demand appraisal on behalf of the insured and argue the reasoning of Pollock to enforce that demand. If you have to file suit and a motion to compel appraisal to get there, I believe that many judges will follow the impeccable reasoning of Judge Spero in Pollock and order Appraisal.

Although **The Pollock Decision** is not law, it does give the insured a pathway to the appraisal process. CAPIA supports and champions the efforts of Amy Bach and United Policyholders' efforts to form a model law; however, we also realize that, should we fight the poor wording in our CA law, if we were to take action, we could wake up a sleeping giant and find ourselves in a much larger battle.

California's second change in CA law is currently only being proposed. It is not coming via legislation but through the Department of Insurance omnibus bill.

Discussions have begun on the "concept of adding an additional insured initial to CIC Section 15027(f)(3) signifying the insured's agreement either that the PA's fee will be based on 1) pre-contract and post-contract

claim proceeds or 2) only on post-contract claims proceeds. Insurance Code Section 15027(b)(7) is a required provision in the PA contract, but it is difficult to understand and is left to each PA to try and explain it to his/her client. Some PAs don't explain it at all. Adding a provision to the PA contract whereby the consumer must initial either that the PA will receive a % of both pre-contract and post-contract insurance proceeds or only a % of post-contract proceeds will show that the insured agrees to the fee structure to be charged by the PA. Consistent with Section 15027(b)(7), the PA should explain to the consumer under what circumstances the PA is entitled to both pre-and post-contract insurance proceeds." - Risa Salat-Kol, Senior Staff Counsel, CA DOI.

Brian Goodman of Goodman & Donohue LLC and General Counsel for NAPIA stated, "This proposal scares me. It is dangerous, and nothing like this exists in any other state. I worry it will get legs and move to other states as well." Others cite that this change could lead to fee caps for all public adjusting contracts in CA.

The consensus of CAPIA members, led by Ron Reitz, SPPA & Robb Greenspan, SPPA, is that these proposed changes will not affect the ethical public adjuster. Thus, CAPIA will not be in dissension of the proposed changes should they be included in the omnibus bill. The actions of a few unethical public adjusters cause a knee-jerk reaction for us all. Once again, we are our worst enemy. CAPIA continues to monitor the 'fee caps' issue should the CA DOI attempt to restrict them.

Should any reader wish to view the complete Joel Gumbiner article on the Pollock Decision, email your request to: [info@capiainc.com](mailto:info@capiainc.com)



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# 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')."<sup>1</sup>

## 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."*<sup>2</sup>

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.'"<sup>3</sup>

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 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.propertyinsurancecoveragela.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

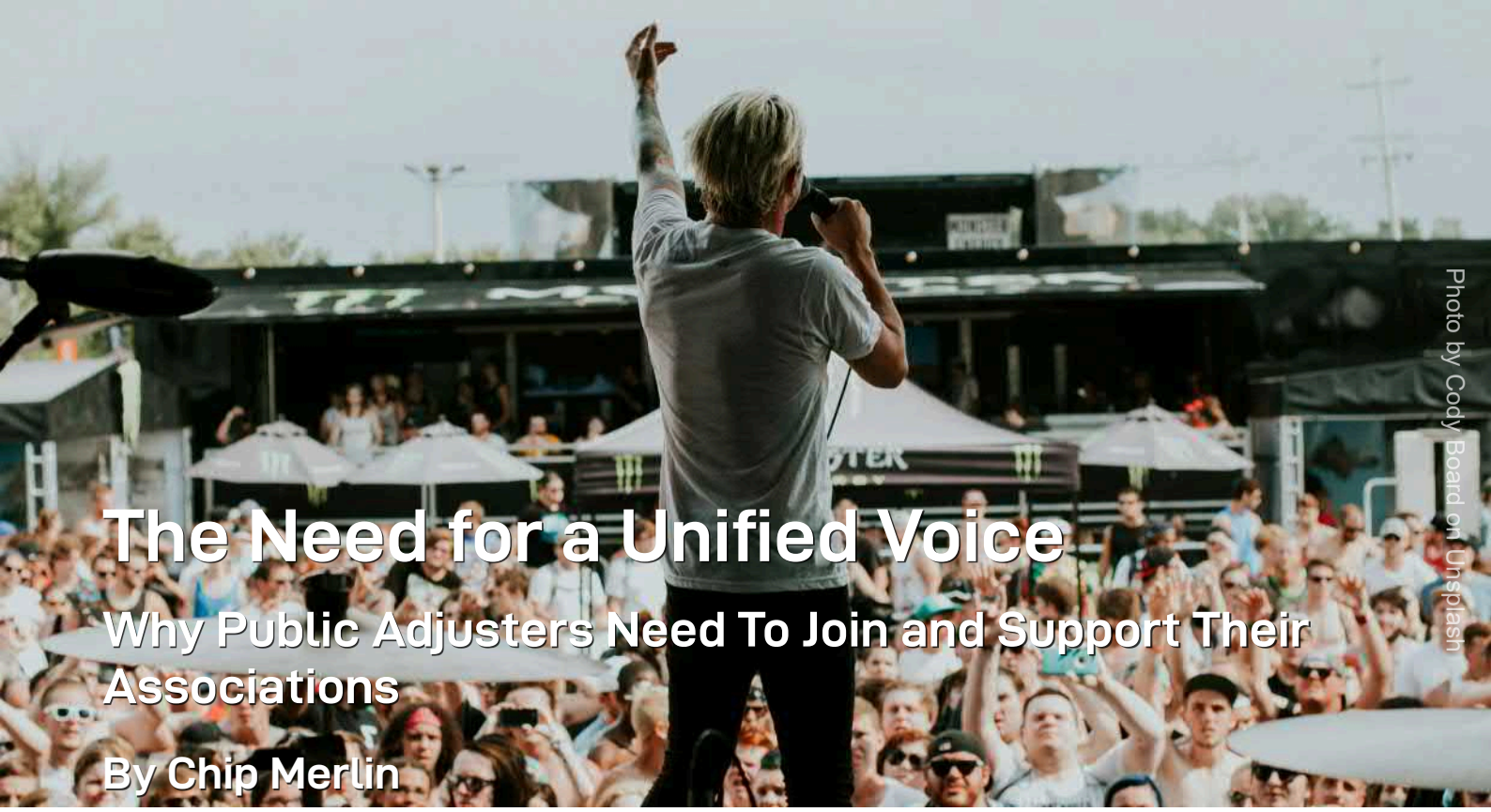
3 Merlin Law Group Article, "Is Arbitration Going to Replace Appraisal in Florida?" by Chip Merlin <https://www.propertyinsurancecoveragela.com/2022/04/articles/insurance/is-arbitration-going-to-replace-appraisal-in-florida/>

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# The Need for a Unified Voice

## Why Public Adjusters Need To Join and Support Their Associations

By Chip Merlin

Following Hurricane Andrew in 1992, Florida insurance regulators and others in the insurance industry wanted to prohibit or severely limit the practice of public adjusting in Florida. As a result, Doug Grose and I helped public adjusters unite. We formed the Florida Association of Public Insurance Adjusters (FAPIA) and, using advocacy and information, successfully fought these efforts to undermine, restrict, and eliminate the profession. The founding members of FAPIA adopted a strong Code of Ethics, and the profession of public adjusting has flourished in Florida — supported by ongoing work of FAPIA members and its professional staff.

Today, we are facing more challenges than ever before. Insurance company interests are advocating nationally to limit or stop public adjusters from helping policyholders. Insurance companies are becoming so brazen as to include terms in their policies that prohibit their policyholders from hiring public adjusters. Lobbyists, legislators, and regulators routinely propose laws that limit a public adjuster's ability

to solicit policyholders who desperately need help following a loss. Those beholden to insurance company political money look for reasons to publicly cast public adjusters in a bad light.

The insurance industry's constant smear campaign against public adjusters is becoming more sophisticated. Some insurers have made efforts to portray public adjusters as opportunists who take advantage of disaster-stricken policyholders. This negative publicity aims to discredit the profession and dissuade policyholders from using their services.

As a result, the profession of public adjusting is subject to a complex and evolving regulatory landscape. Insurance regulations and statutory law vary across states. It is therefore vital for public adjusters to stay informed and to be proactive in protecting their interests and the interests of their policyholder clients. Public adjusters must counter the unfair criticism and propaganda spread by insurance industry lobbyists. This is where public adjuster

associations play an indispensable role, acting as the voice of the profession and ensuring fair representation before insurance regulators and state legislators.

So, how does joining a public adjuster association benefit a public adjuster?

### **A Unified Voice for the Industry**

Public adjuster associations serve as a unifying force for the profession, bringing together adjusters from diverse backgrounds and areas of expertise. By aggregating the collective knowledge, experience, and concerns of their members, these groups, both regional and national, are better positioned to identify key issues facing the industry and develop strategies to address them effectively. This unity allows them to represent the interests of public adjusters with a single, powerful voice when engaging with regulators and legislators.

## Navigating the Regulatory Landscape

Insurance regulations can be complex, and changes can significantly impact the way public adjusters conduct their business. Trade groups closely monitor regulatory developments at the state level, and from the National Association of Insurance Commissioners, ensuring that their members are informed about proposed changes and how they may affect their profession. By maintaining an active presence in these discussions, associations can provide valuable input on behalf of their members and help shape regulations that are fair to the industry and to the policyholders.

## Influencing Legislation

In addition to monitoring and navigating regulatory changes, public adjuster associations play an active role in influencing state insurance legislation and licensing laws. They collaborate with lawmakers to draft, amend, and promote legislation that supports the interests of public adjusters and their policyholder clients. By maintaining strong relationships with key decision-makers, associations can ensure that the concerns of public adjusters are heard and considered when laws are being drafted or revised. The insurance industry has an army of lobbyists in state legislatures—associations help level the playing field.

And this is necessary because many legislators have never heard of public adjusting before they are asked to pass laws that impact the profession and public adjusters' ability to help policyholders. NAPIA, along

with many of the other regional associations, have worked to raise awareness about the role and benefits of public adjusters with legislators. This has increased recognition of the profession and created greater demand for public adjusting services. In turn, there is much stronger legislative support for public adjusters in the law and when seeking licensing.

## Protecting the Profession

Public adjuster associations are dedicated to protecting the integrity of the profession and ensuring that their members have the opportunity to thrive in their chosen field. Through their advocacy efforts, they work to prevent unfair or overly restrictive regulations and laws that could hinder the ability of public adjusters to serve policyholders effectively. By joining and then supporting national and regional associations, public adjusters benefit from the strength of a united front when facing regulatory and legislative challenges.

I recently wrote about NAPIA's early response to insurance policy endorsements that prohibit policyholders from hiring public adjusters. This happens by bringing concerns about such endorsements to the attention of State Departments of Insurance and Attorneys General.

*Public adjusters have been calling us asking what can be done about some insurance companies placing endorsements into policies that prohibit policyholders from hiring public adjusters and preventing public adjusters from being involved with the policyholder's claims. The*

*National Association of Public Insurance Adjusters (NAPIA) has taken the lead in fighting this by sending letters to all state attorney generals and actively raising the issue with the insurance departments. NAPIA's general counsel, Brian Goodman, and I have spoken about this issue in the past because the clauses appear to breach licensing laws and raise violations of state and federal antitrust laws.*

...

*I applaud the leadership of NAPIA for taking this action. I want to encourage all public adjusters to support NAPIA's efforts. NAPIA has been at the forefront of public adjuster licensing, establishing Codes of Ethics and making a Model Public Adjusting law recognized by the National Association of Insurance Commissioners.*

## Professional Development

The first public adjuster conference I attended was the National Association of Public Insurance Adjusters (NAPIA) annual meeting at Carmel, California in June 1985. Since then, I have attended hundreds of public adjuster conferences and have had the privilege of helping form a number of regional public adjusting associations throughout the United States. In addition to the advocacy and representation protecting the profession, I have witnessed how supporting and participating in a public adjusting association benefits its members.

**Education:** Associations provide access to educational resources, training programs, and certification opportunities that help public adjusters stay up-to-date with industry trends and best practices. Ongoing education leads to

increased competence, marketability, and results in better adjusted losses for your policyholder clients. This is why the very best public adjusters belong to associations. Some of the most valuable education occurs during casual conversations and collaborations at association meetings and training programs, and this is one reason I personally love to attend public adjuster conferences.

**Industry news and updates:**

Public insurance adjusters in associations receive more timely updates on industry news, adjustment trends, regulatory changes, and policy form changes. These updates are crucial to stay informed, competitive, and up-to-date with adjustment valuation and negotiation challenges faced in the field. It is possible to obtain the same information with diligent research, but chances are you will miss a lot of valuable information that can cost both you and, often, your policyholder client.

**Ethical guidelines and standards:**

Every public adjusting organization I have been involved with develops, enforces, and raises ethical guidelines and professional standards. Membership in these organizations demonstrates an adjuster's commitment to ethical practices and high-quality service for policyholders. It distinguishes public adjusters from those who purport to provide the same services but often do not and brings respect from insurance company adjusters. Policyholders deserve professional and ethical help. Associations are the entities that develop these standards.

**Marketing and exposure:**

Marketing opportunities are some of the most gratifying examples of the benefits that come with membership in a public adjuster association. Clients have told me that they have hired one public adjusting firm over another based upon active participation in an association. When policyholders decide which public adjuster to hire, they observe that those with profiles demonstrating dedication to the profession through involvement in associations are typically retained for larger losses. The increased visibility and participation in associations helps attract clients and strengthens an adjuster's reputation and business typically retained for larger losses. The increased visibility and participation in associations helps attract clients and strengthens an adjuster's reputation and business.

**Support and camaraderie:**

It is amazing how many public adjusters, and sometimes their families as well, become friends through association participation. I have been around long enough to see the children of public adjusters hang out together, join the family business, and make alliances with those they have known since childhood. Every association I have had the pleasure of working with seems to generate a sincere sense of belonging and support among fellow professionals. Public adjusting is a difficult profession to do correctly. By sharing experiences, giving friendly advice, and providing resources and support to one another, public adjusters in associations enjoy camaraderie that is uncommon among those not active in associations.

I cannot imagine why a public

adjuster would not want to align with similar professionals dedicated to helping policyholders in their time of need. It is an everything to win and nothing to lose proposition. I fully support NAPIA and regional public adjusting associations that are dedicated to the interests of policyholders and those licensed to help them navigate property insurance claims. Please join and support your regional and national associations and encourage others to do so.

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# Public Adjusters As Policy Advocates

By Ann M Frohman, Esq.

Liaison to the National Association of Insurance Commissioners

Dealing with daily aspects of your job as a public insurance adjuster can be taxing. After all, it is a labor of advocacy on behalf of your client, whether a homeowner, a small business or a large commercial enterprise with an insurance company representative. Many things can go off the rails, as if losing a home or business to physical damage isn't enough. Public adjusters might encounter situations where their clients are waiting months for responses from insurer representatives, and this can be frustrating.

communities affected by catastrophes who attract bad actors, public adjusters might be asked to take sides in partisan debates, answer reporters' questions, and often give expert testimony in court cases on how claimants should be properly treated. Public adjusters might also be concerned with the appraisal process which can and does often break down, slowing payment and increasing the cost to settle a loss.

This might bring a public adjuster into the foray of lobbying for stronger regulation and encourage enforcement by state insurance departments to protect consumers. Public adjusters can often find themselves giving technical and financial support to citizens groups, such as United Policyholders, an effective consumer watchdog that protects consumers from mistreatment. All the while, you often find yourself explaining to government regulators and legislators, let alone the public, as to who is involved in the claim - from roofers, general contractors, lawyers, renovation and mitigation experts - to public adjusters, independent adjusters, and other associations and advocates.

You might not be aware that all of this is public advocacy. That is to say,

conversations aimed at influencing public policymakers and institutions (above and beyond securing the services for your customers on a specific property loss) represents uncharted territory for many public insurance adjusters. Even those with a penchant for doing social-good, they lack the information and strategic know-how to engage. The National Association of Public Insurance Adjusters is just the organization to support these efforts. It is no surprise that members of NAPIA have learned through the association network on how to advocate and thus, find themselves as leaders in the association. The power of the network cannot be overstated. Public adjusting is a profession that helps the public and has a public advocacy need to set the record straight. It also needs highly ethical public advocates with technical skills of the profession who are eager to influence social institutions and tell the story of what the claims process would look like if public adjusters were not here to correct the story.

## NAPIA RESOURCES FOR BUILDING AN ADVOCACY STRUCTURE

Coordination with other stakeholders is the key advocacy plan at NAPIA. At present, policy advocacy at NAPIA consists of a



You, as public adjusters, can and are often asked to intervene after a claimant receives payment from an insurer only to learn the payment was assigned to a third-party who fails to perform quality work or complete the job. In

thoughtful, multi-faceted approach from grass roots messaging to grass roots influencing and alignment with local associations. Each year, NAPIA reaches out and coordinates a summit bringing together all public adjuster associations nationwide to compare notes on public policy and advocacy experiences. These associations may not always see matters the same way, but we almost always find more common ground than not. Working together is a powerful strategy.

NAPIA, through their national lobbyist, general counsel, and officers, also develop key topics critical to the profession. NAPIA retains the talking points on these topics for individual member usage under the membership access on the NAPIA website. These talking points are prepared for members consistent with NAPIA's national messages.

This year, NAPIA is focusing on encouraging governmental institutions to increase education on the very existence of public adjusters. We have worked with FEMA, which has included the role of a public adjuster in the claims process on an infographic for the public. Just this year, NAPIA worked with the Coalition Against Insurance Fraud, which created its own infographic for use by NAPIA, to explain how public insurance adjusters fit into the claims process. NAPIA is a member of the Coalition Against Insurance Fraud which encourages NAPIA members to utilize these tools to educate claimants. These tools are available through the member link on the NAPIA website. NAPIA utilizes a Quick Strike Team when states lack associations to lobby effectively. The Quick Strike Team is a group of individual

members selected by NAPIA leadership who stand ready to assist on legislative activity in a rapid response for legislative advocacy efforts when time is of the essence. The legislative committee brings matters to the attention of the QST, who can then utilize the talking points. Discussions are coordinated nationally for QST members to compare notes if similar legislation is moving through numerous states at one time. Comparing notes on what advocacy works, and what advocacy doesn't, creates powerful tools to protect NAPIA's member interests. These opportunities for engaging make a difference and are great ways to participate. Remember, if you want to do this, you don't have to work alone. NAPIA has the tools, network and strategy to help you along.

NAPIA retains not only a national lobbyist and general counsel, but also works to protect the profession of public adjusting by engaging lobbyists to work on specific legislation. Just this year, NAPIA has sent letters to legislators in Kentucky and Indiana recommending ways to improve legislative bills. NAPIA also retained lobbyists to modify legislative proposals in Kentucky and Florida, working with and serving in supporting roles with other stakeholders when it makes sense to do so. In Texas, NAPIA leadership testified at the State House, along with the Texas Association of Public Insurance Adjusters, to stop the anti-public adjusting policy endorsements.

### **ADVOCACY AT THE NAIC**

The year 2023 may prove to be a monumental year for advocacy nationally. Back in 2005, NAPIA was effective in

getting a model licensing law created and adopted in more than half the states. Today, most states have enacted the model or a substantial portion of it. The NAIC has announced that it will be revisiting the model, starting this year, in order to enhance consumer protections and refresh the rules where needed. It is clear there are many new challenges that were not present in 2005. Stay tuned for updates!



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