SECTION 6: PUBLIC COMMENTS AND RESPONSES

INSURANCE ASSOCIATION OF CONNECTICUT

SUITE 607 • 21 OAK STREET, HARTFORD, CT 06106 • PHONE (860) 547-0610 • FAX (860) 547-0615

August 31, 2011

Anthony Caporale, Esq.
Counsel
Insurance Department
P.O. Box 816
Hartford, CT 06142-0816

RE: Proposed Regulation 38a-788; Requirements for Public Adjusters

Dear Mr. Caporale:

The Insurance Association of Connecticut (IAC) continues our support of the Department's efforts to update the regulations pertaining to Public Adjusters and the apparent goal of facilitating settlements when a public adjuster is involved in the process. However, the industry continues to have strong objection with any attempt to alter the insurance contract by mandating appraisals when a public adjuster is involved in a claim. Insurance contracts already permit parties to demand an appraisal at any time. A public adjuster is not a party to that contract and should not have any ability to mandate that any provision of the contract be triggered, especially in an arbitrary time frame. The public adjuster enters in a contract with the insured and, therefore, works for the insured. Any requirement made of the public adjuster pursuant to regulation should focus on that contractual relationship. Mandating the public adjuster recommend or advise their client in writing of their ability to request an appraisal would better serve the interests of all parties.

Thank you for the opportunity to comment. We look forward to working with you further on this proposal.

Sincerely,

Susan Giacalone
Counsel

STATE OF CONNECTICUT

INSURANCE DEPARTMENT

April 20, 2012

Attorney Susan D. Giacalone
Insurance Association of Connecticut
21 Oak Street
Hartford, CT 06106

Re: Proposed Amendment to Regulations Relating to Public Adjusters

Dear Attorney Giacalone:

Thank you for taking the time to submit comments in response to the Insurance Department's ("Department") notice of intent to amend regulations relating to the requirements applicable to public adjusters.

Please accept the following reply to the issue that you have raised in your letter dated August 31, 2011, in which you state that the Insurance Association of Connecticut ("IAC") and the industry in general have strong objections to the Department's proposed provision that mandates public adjusters to ask for appraisal if the claimant and the insurer fail to reach an agreement on a claim within a certain period of time and the claimant, unless the claimant agrees to extend the time period.

The specific concern that you have brought to the Department's attention is that, by requiring that a public adjuster proceed to the appraisal process within a specified period of time if the insurer and the insured fail to agree on the amount of the loss, the regulation would have the effect of altering the contractual relationship, as expressed in the insurance policy, between the insurer and the insured.

I would note that the proposed provision referenced in your letter does not introduce any new rights or obligations in the contractual relationship between the insurer and the insured, as the right of an insured to require that a matter proceed to appraisal is already included in virtually every insurance policy covering damage or loss of property. The proposed amendment merely gives the insured the ability to invoke the appraisal provision if an insurance claim remains unsatisfied for a stated period of time from the date on which the insured and a public adjuster have entered into a contract with regard to such claim. I would also note that under the proposed amendment the insured has complete discretion about whether or not to proceed to appraisal within the time provided by the regulation.

Although some changes have been made to the proposed regulation in response to public comments, because of the above considerations, the Department has decided against deleting or changing the proposed provision upon which your concern is based.

I am attaching the final wording of the proposed regulation for your convenience.

Should you require any additional information, please do not hesitate to contact me at (860) 297-3981

Best regards,

Tony Caporale
Counsel

CAPIA
Connecticut Association of Public Insurance Adjusters

Alan Sabel, *President*
Richard Ouellette, *Vice-President*
Sanders Hoffman, *Treasurer*
Wesley Robinson, *Secretary*
Jon D. Biller, *Executive Director*

2750 Whitney Avenue
Hamden, CT 06518
203-281-1717 phone
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2011 AUG 25 A 11:54

August 24, 2011

Anthony Caporale, Esquire
State of Connecticut
Department of Insurance
P.O. Box 816
Hartford, CT 06142-0816

RE: Proposed Changes to Connecticut
Insurance Adjuster Regulations

Dear Attorney Caporale:

We are writing in connection with the proposed regulations as per the Department's notice of intent to amend published in the Connecticut Law Journal on July 25, 2011.

As you know, CAPIA, the Connecticut Association of Public Insurance Adjusters, is an organization comprised of many of the State's public adjusting firms including some of the largest and oldest. Despite the competitiveness of our profession, many public adjusters in this State have come together through the auspices of CAPIA in an effort to better serve Connecticut consumers.

The legislative and executive committees of CAPIA have met and spent many hours reviewing and discussing the proposed regulations. We understand the department has a need to regulate public adjusters, and while we believe some of the proposed regulations will be helpful, we believe others will be detrimental to Connecticut consumers and restrict our ability to advise and properly represent Connecticut insureds.

In general, CAPIA has no objection to public adjuster fees being charged based upon the amounts actually received by the insured. We understand there have been certain instances of public adjusters charging fees based upon monies anticipated to be paid at some time in the future, and CAPIA believes the spirit and intent of the compensation regulations is that public adjusters are only paid based upon the monies actually received by or on behalf of the client. CAPIA's only comments in regard to the proposed regulation Section 38a-788-8, Compensation is that the Commissioner consider changing the word "claimant" to the word "insured" or "claimant/insured" for clarification purposes.

CAPIA also understands that in certain instances appraisal is a valuable and necessary tool that must be used by Connecticut insureds. CAPIA agrees that notifying insureds of their right to

appraisal is important and has no objection to the Commissioner's proposed regulation that seeks to include notification of the right of appraisal in the public adjuster's contract. CAPIA, however, does not believe it is advisable or necessary to overly emphasize that language as compared to other rights set forth in the employment contract. With this caveat, CAPIA would have no objection to the proposed Section 38a-788-6 Form of Contract.

However, in regard to the proposed Section 38a-788-5 Settlement Offers, CAPIA must strenuously and vigorously object on several grounds. CAPIA's first concern is the use of the word offer. Often estimates are provided that are not approved or authorized offers. CAPIA would request the words "bonafide and approved" be added to the word "offer" to provide clarification. Further, CAPIA has no objection to a ten or thirty day time frame, however, it strongly believes having the client endorse counteroffers will be confusing and counter-productive. CAPIA instead would suggest the regulations require the public adjuster certify on the rejection/counteroffer that a copy thereof has been forwarded to his or her client similar to an attorney certifying on a pleading that a copy thereof has been sent to his or her client or to opposing counsel.

As to subparagraph (b), CAPIA has many of the same objections as were raised by many of its members in 2009 when a similar proposal was made. Requiring the parties to automatically proceed with appraisal within a specified period of time would appear unconstitutional on its face, against policy provisions and against Connecticut statutes. While appraisal is an important option, one that is available to both the insured and the insurance company, CAPIA does not believe that the Department by regulation can require either party to proceed to appraisal within a certain period of time and that would, in effect, be a rewriting of the Connecticut standard fire insurance policy which is beyond what can be done through regulation.

Further, if the purpose of referring the matter to appraisal is to try to move the claim forward; in fact, an appraisal process can take months and sometimes many, many months for resolution. It requires the coordination of meetings between three people and the taking of evidence. In CAPIA's experience and in the experience of many of its members who serve as appraisers, most claims are settled through the adjusting process much more quickly than they are resolved through the appraisal process. While it may be easy enough for an insurance company to appoint its appraiser, finding an appraiser for an insured is often difficult. More importantly, if the parties cannot agree to the third appraiser, who is generally known as the umpire, then the insured must often bear the expense of hiring an attorney and filing an application in court to compel the appointment of an umpire. This can often take many months and involve several court proceedings. Therefore, in practice the appraisal process is neither shorter than the adjustment process nor less expensive. In fact, it can often lead to significant additional expense to insureds and significant additional delay in the resolution of claims.

Moreover, nothing in the proposed regulation imposes any obligation on the part of the insurance company to do anything in regard to moving a claim forward. To the extent the proposed regulations are intended to provide a mechanism by which public adjusters must move their claims forward, CAPIA agrees that the Connecticut Insurance Department must vigorously assure that both insurance companies and public adjusters do everything possible to move claims forward on behalf of Connecticut consumers. The problem is the proposed regulation as it stands

does nothing to address the insurance company at all. Instead, by forcing the insured to proceed to appraisal within a certain period of time the Department is imposing upon the insured a potentially significant and great burden. This is particularly true in regard to homeowners and insureds that have smaller claims.

CAPIA believes that while the Department can regulate insurance companies in regard to delay of claims, so too the Department can regulate public adjusters. If insurance companies delay the adjustment process, the Department must vigorously prosecute those insurance companies, and if public adjusters delay the adjustment process, the Department must prosecute those public adjusters. Accordingly, CAPIA would strongly suggest that where any licensed public insurance adjuster in this State is found to have three or more complaints determined to be justified by the Department, that public adjuster should be turned over to the enforcement division of the Insurance Department for further investigation, and if necessary, appropriate license suspension or revocation.

CAPIA is more than willing to work with the Department of Insurance in reviewing complaints and identifying those public adjusters who delay claims. We believe that by enforcing the complaints filed against public adjusters, the Department of Insurance will do far more to assure public adjusters expeditiously move their claims forward than the proposed appraisal regulation.

The Executive Board of CAPIA would greatly appreciate the opportunity to meet with representatives from the Department of Insurance to discuss our concerns, the regulations we agree with and to discuss our very strenuous objections to those regulations we oppose.

To the extent such a meeting can be scheduled, we look forward to meeting with you.

The Executive Board against thanks you for your time and attention.

Sincerely,

Allan Sabel, SPPA
President

STATE OF CONNECTICUT

INSURANCE DEPARTMENT

April 20, 2012

Mr. Allan Sabel, SPPA
Connecticut Association of Public Insurance Adjusters
2750 Whitney Avenue
Hamden, CT 06518

Re: Proposed Amendment to Regulations Relating to Public Adjusters

Dear Mr. Sabel:

Thank you for taking the time to submit comments in response to the Insurance Department's ("Department") notice of intent to amend regulations relating to the requirements applicable to public adjusters.

Please accept the following reply to the issues that you have raised in your letter dated August 24, 2011, in which you state general support for the proposed amendment, but you also voice concerns over some of its proposed provisions.

The specific concerns that you have brought to the Department's attention are set out below and are answered in the order that you have presented them.

1. You support the proposed provision that seeks to include in the public adjuster's standard contract a notification of the insured's right to petition for appraisal, but you do not believe that it is necessary to overly emphasize such language as compared to other provisions contained in the employment contract.

Response: I believe that you may have come to the conclusion that the Department intends to emphasize the new language relating to the insured's right to appraisal because in the proposed amendment such language is written in capital letters. Please be advised that the Department does not intend to emphasize such language at all in the final regulation, rather, the addition is written in capital letters because per section 4-170 of the Connecticut General Statutes new proposed language added to an existing regulation must be in capital letter.

2. The proposed amendment is cumbersome for public adjusters in that requiring clients to endorse counteroffers would be confusing and counterproductive.

You also object to the use of the word "offer" unless modified by an additional qualification such as "bonafide and approved".

Response: The Department believes that proper and recurring communications, as frequent as required by the circumstances, between public adjusters and their clients are important and can only lead to better service, better results and better informed clients. As such the Department does not believe that requiring public adjusters to present offers in writing and have their clients approve them would be counterproductive or burdensome. In addition, the Department does not believe that the word "offer" is ambiguous and would need further qualification.

3. Requiring public adjusters to invoke the appraisal process within a certain period of time would violate the provisions of the standard fire policy and would be unconstitutional.

Response: Every insurance policy issued in Connecticut, including the standard fire policy, includes a provision whereby an insured has the right to request appraisal if the insured and the insurer fail to agree as to the actual cash value or the amount of a loss. The regulation does not change this requirement or the right of the insured to make decisions about whether or not to proceed to appraisal. This provision is not dissimilar to provisions requiring payment from an insurer of a claim within 30 days after proof of loss. Most importantly, according to the proposed amendment, the insured decides whether to proceed to appraisal or continue with the adjusting process.

4. Requiring that public adjusters refer matters to appraisal can result in delay in the resolution of claims and additional expense to the client.

Response: The proposed amendment does not require that a matter must be submitted automatically to appraisal after the passage of a certain period of time. Rather, it obligates the public adjuster to make the client aware of the right to appraisal and obtain the client's permission to delay referring a matter for appraisal when agreement on the value of a loss is not reached within a certain period of time

5. No provision in the proposed amendment imposes any obligation on the insurer to do anything to move a claim forward.

Response: Given actual statutory and regulatory provisions imposing numerous and substantial obligations on insurers, the Department has sufficient authority to hold insurance companies accountable for delays that such companies may cause during the adjusting

of claims. As such, the Department believes that it is not necessary to enact any additional provisions in that respect.

I am attaching the final wording of the proposed regulation for your convenience.

Should you require any additional information, please do not hesitate to contact me at (860) 297-3981

Best regards,

Tony Caporale

NORTH EAST ADJUSTMENT COMPANY, INC.

121 Talcott Road
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2011 AUG 25 A 8:44

August 23, 2011

State of Connecticut
Insurance Department
Attention: Anthony Caporale, Counsel
P.O. Box 816
Hartford, CT 06142-0816

Re: Amendment to the Regulations Pertaining to Public Adjusters

Dear Mr. Caporale:

Having carefully reviewed the Insurance Department's proposal to amend the regulations pertaining to certain requirements applicable to public adjusters, I am deeply concerned that the proposed changes will have serious, unintended consequences. They are burdensome and unrealistic for the insurer, the insured and their respective representatives. The changes as proposed certainly appear to be contrary to public policy and perhaps raise certain constitutional questions at both a State and Federal level.

Paragraphs B & C of Section 38a-788-5, Settlement Offers, are most concerning as the majority of larger property damage claims do not settle within one hundred twenty (120) days from the date of loss for a variety of reasons. Once a claim is filed by a policyholder or his representative, a causation investigation needs to be completed and coverage and damage determinations need to be made. This means that facts need to be gathered, experts retained if required, documents need to be reviewed, subrogation issues addressed and evidence preserved, damage estimates for both building and contents must be prepared and documented, and offers made and countered. All this and often more must be done prior to a claim settlement agreement being reached. The larger and more complex a claim is, the longer it takes to complete these tasks.

To mandate that a public adjuster "shall" request that the matter be referred to appraisal if a settlement agreement has not been reached within one hundred and twenty (120) days from the date of loss is simply not realistic and a very hazardous road to go down for the following reasons of:

1. The majority of the larger ($20,000.00 plus) first party property damage claims simply do not settle within one hundred and twenty days, regardless of whether or not the policyholder is represented by a public adjuster. The severity and complexity of a claim dictate the time frame it takes to resolve and settle a loss. For example, a large structural loss to real property may resolve in 180 days, whereas the loss to the business personal property may take 90 days. The loss of earnings claim that arises out of this loss most likely would not be resolved until after the business had resumed operations, which could be up to a year or longer.

2. There is no time frame specified wherein the insurer must render a settlement offer to the public adjuster. Simply put, if the insurer fails to make an offer prior to 120 days from the date the of the contract, for whatever the reason may be, the public adjuster is compelled to file appraisal papers or have an extension granted by the insured. This is complicated by a 14 day time frame during which the insured might be away.

3. The policyholder and their representative will ("shall") be required to appraise the loss even if no offer is received from the insurer or a settlement is not reached by the 120 day mark regardless of whether or not there are any disagreements over values at this point in time. Additionally, the way in which the language has been drafted, the policyholder may have no choice but to file appraisal papers at the 120 day mark even if he wishes not to do so, but is not available during the 14 day window provided, because his public adjuster is mandated to do so or be in violation of the regulation.

4. Represented policyholders will now have an additional financial burden placed upon them as most larger claims will be appraised and they will be required to fully fund the cost of their appraiser and share one half of the cost of the umpire. This additional cost may amount to thousands of dollars.

5. Insurers will also be burdened by additional claim expense costs associated with formal appraisals which will be levied against the expense side of their books. It is normally in the best interest of the insuring public, from a premium cost standpoint, for insurers to control claim costs.

6. The proposed regulatory change does not conform with the spirit, purpose or intent of the appraisal clause language of the Connecticut Standard Fire Policy as found in the General Statutes [Conn.Gen.Stat 38a-307]. In that statute the appraisal process is provided to resolve disagreements on value which are not able to be handled in normal negotiations. It is not set forth as a regulatory measure for any individuals.

7. An additional encumbrance on our State's judicial system will most likely be an unwanted result that will arise out of the proposed changes to the regulation. With a large increase in the number of appraisals comes an increase in the number of disputes between appointed appraisers regarding the selection of an umpire. The courts will be called upon in those cases to appoint the umpire. This costs time and state revenues.

8. The appraisal process does not guarantee an expeditious resolution to a claim. there are no time limitations set on how long the appraisal process should take. In fact, in some cases the appraisal process takes many months before there is a final award.

9. Un-represented policyholders and insurers are not subject to the 120 day appraisal requirement as dictated by the proposed regulation and therefore by default the regulation places the represented policyholder into a class of individuals and entities whom are subject to a different standard and are deprived fair and equal treatment under the regulation.

10. The regulation, as proposed, is anti-consumer in that the policyholder who needs and desires representation would be more hesitant to retain the services of a professional public adjuster due to the probability that they would incur additional expenses associated with the appraisal. Insurance company representatives presently discourage policyholders from retaining representation in ways that are overt as well as in ways that are more subtle. I am quite sure that there would be no restraint by the insurer's representative in painting a picture in the mind of the policyholder / consumer of the resulting doom and gloom that they would experience if they retained a public adjuster and their claim is forced into appraisal 120 days later.

The above mentioned points are the dominant reasons why I believe that paragraphs B and C of Section 38a-788-5 should be completely eliminated from the proposed changes to the regulation. In a nutshell, the requirements of paragraphs B and C of the proposed regulation changes do not recognize the everyday reality of adjusting a larger first party property damage claim.

Paragraph A of section 38a-788-5 also raises concerns which I will briefly outline below; however, please understand that I am a firm believer that communication with a client is absolutely necessary throughout the claims adjustment process. If a written offer is received by a public adjuster it should be transmitted to the client in a timely manner and 10 days is not unreasonable.

What is problematic with paragraph A is that in most cases it is impossible to prepare a well thought out and intelligent rejection or counter offer in thirty days. It is certainly possible to notify the insurer of rejection of the offer within that time frame. Typically, a "side by side" review of estimates and related supporting documents must be completed by the public adjuster to be able to properly evaluate the sufficiency of the offer. Reviewing and evaluating a building damage estimate for example, with hundreds and often times thousands of lines of information, takes many hours of time which has to be completed along with all of the other tasks that the public adjuster must perform for all of his clients in any typical work week. The evaluation of an offer as it pertains to other types of claims, such as personal property, business income loss, a business stock loss, etc., can take even more time. In addition I would propose that the adjuster be permitted to "certify" notification of the client similar to the process practiced by attorneys.

I believe a more practical approach to rectifying the problems that the Department has experienced with certain public adjusters in the past, would be to draft the modification to paragraph A in such a manner requiring the public adjuster to notify the insured within 10 days and respond in a timely fashion to any written offers or counter offers made by the insurer. The use of the appraisal process to insure better communication between adjuster and client is a bit like using a howitzer to kill a fly.

With regard to Section 38a-788-8, Compensation; I fully support the proposal to amend the section whereby the public adjuster's compensation for services rendered, would be based on only those monies actually received by the insured.

I have no problem with Sec 38a-788-6 although side one is already a bit crowded.

I would like to thank you for your time and if I can be of any assistance with regard to these matters please do not hesitate to contact me. I would be happy to meet with you or speak with you by telephone at any time.

Very truly yours,

NORTH EAST ADJUSTMENT COMPANY, INC.

Philip G. Flaker sc

Philip G. Flaker,
Vice President

PGF/sc
enclosure

STATE OF CONNECTICUT

INSURANCE DEPARTMENT

April 20, 2012

Mr. Philip G. Flaker
Vice President
North East Adjustment Company, Inc.
121 Talcott Road
West Hartford, CT 06110-1229

Re: Proposed Amendment to Regulations Relating to Public Adjusters

Dear Mr. Flaker:

Thank you for taking the time to submit comments in response to the Insurance Department's ("Department") notice of intent to amend regulations relating to the requirements applicable to public adjusters.

Please accept the following reply to the issues that you have raised in your letter dated August 23, 2011, in which you state that some of the proposed changes are burdensome and unrealistic and, in addition, may have unintended consequences.

The specific concerns that you have brought to the Department's attention are set out below and are answered in the order that you have presented them.

1. Requiring that public adjusters request that a matter be referred to appraisal if a settlement has not been reached within 120 days from the date of loss is not realistic for a number of reasons, including (a) the majority of larger first party property claims do not settle within 120 days; (b) insurers are not obligated to make a settlement offer within 120 days; (c) the claimant and the public adjuster are required to proceed to appraisal after 120 days even if the insurer makes no offer of settlement; (d) the requirement will result in a financial burden for claimants, who will be required to assume the cost of hiring an appraiser and fund one half of the cost of an umpire; (e) insurers will be burdened by increased costs related to the appraisal process; (f) the proposed change does not conform with the intent of the standard fire policy; (g) the judicial system will be burdened by the increased number of appraisals; (h) the appraisal process does not guarantee a more expeditious resolution of claims; (i) policyholders represented by public adjusters will be part of a disadvantaged class because unrepresented policyholders are not required to abide by the same standards; and (j)

policyholders will be hesitant to retain the services of a public adjuster because of the potential of increased costs associated with the appraisal process.

Response: The proposed amendment does not require that a matter must be submitted automatically to appraisal if the claimant and the insurer fail to reach a resolution to the claim within 120 days. Rather, it obligates the public adjuster to make the client aware of the right to appraisal and obtain the client's permission to delay referring a matter for appraisal when agreement on the value of a loss is not reached within that time. Every insurance policy issued in Connecticut, including the standard fire policy, includes a provision whereby an insured has the right to request appraisal if the insured and the insurer fail to agree as to the actual cash value or the amount of a loss. The regulation does not change this requirement or the right of the insured to make decisions about whether or not to proceed to appraisal. Most importantly, according to the proposed amendment the insured, most likely after having consulted with the public adjuster and having weighted all the available options, decides whether to proceed to appraisal or continue with the adjusting process. Consultation with the client on this issue is certainly beneficial, as the Department believes that proper and frequent communications between public adjusters and their clients are important and can only lead to better service, better results and better informed clients. This should be sufficient to ensure that the appraisal process will be used only when the process is in the client's best interest.

2. You believe that communication with clients is absolutely necessary throughout the adjusting process, and that 10 days is not an unreasonable amount of time in which to notify a client of a written offer. You believe, however, that it is not feasible to prepare a well thought out an intelligent counteroffer in 30 days.

Response: The Department agrees that 30 days may be insufficient to formulate a proper counteroffer and we have changed the proposal to provide that a counteroffer must be submitted within 45 days.

I am attaching the final wording of the proposed regulation for your convenience.

Should you require any additional information, please do not hesitate to contact me at (860) 297-3981

Best regards,

Tony Caporale