Adjusting Our Understanding of Public Insurance Adjusters

By: Ann Frohman

If you are reading this article at the time of its issue, it is mid-Summer and ice cream should be in one hand and a spoon in the other. We have so many options: chocolate and vanilla, yes, but “baseball nut” was a flavor I fancied as a child. Of course, as insurance people, we look forward to each issue of The Regulator as a dessert. We are also qualified to multi-task, so grab your dish of ice cream, add sprinkles if you wish and let’s get started.

Insurance regulators issue a variety of licenses. This is not surprising given the twenty-one or so lines of insurance. Producer and insurance company licenses are two of the most common, much like chocolate and vanilla ice cream. This article focuses on the less common licensing of public insurance adjusters, akin to the “baseball nut” of ice cream flavors. As you down that first bite of frozen dairy, please know that public insurance adjusters have been around longer than “baseball nut” flavored ice cream. In fact, public insurance adjusters have been operating a decade before I entered this world, which I add, thankfully, was quite some time after the invention of soft-serve.

Public insurance adjusters have been operating as a profession in the United States since the 1950’s. Before then, and much like realtors and tax advisors, public insurance adjusters were deemed to be engaging in the unauthorized practice of law. Today, a public insurance adjuster is known merely as a “public adjuster” or by the acronym “PA.” I will stick with the term public adjuster in lieu of the PA acronym if only because a scoop of “BN” is as appetizing as a pharmacy purchased fruitcake.

In 2005, the National Association of Insurance Commissioners (NAIC) enacted a model law, THE PUBLIC ADJUSTER LICENSING MODEL ACT, MODEL #228.[1] This model has been codified in various forms in all states except Alaska, Arkansas, Alabama and South Dakota. It seems an odd lot. Have residents of these four states also missed out on “baseball nut”? In summary, the NAIC model, like most states, clarifies that a public adjuster is one who negotiates, adjusts and settles a residential or commercial property claim on behalf of an insured.


Continued on Page 2
In practicality, small residential claims such as roofing claims are seldom appropriate for public adjusters. Many public adjusters, although not all, would agree with this statement. The reason? Insureds are obligated to pay public adjusters fees which are, for the most part, a percentage of the claim. Some might charge hourly for advisory services. Public adjusters are experts in complex analysis and it would be too costly for insureds to hire public adjusters on lower dollar matters such as common residential roofing claims. Public adjusters comb through sophisticated claims, often finding dollars left on the table of which claimants are not otherwise aware.

With that said, complex residential losses unfortunately do happen and like commercial claims, these are well-suited for expert representation. Often times, business owners are grateful to have this assistance when they don’t want to be occupied with the paperwork and time it takes away from running a business in order to collect bids and file the claim. Public adjusters are experts skilled in policy coverage, lost revenue, bid processes, reconstruction, materials and the ever-important emergency mitigation analysis. Mitigation efforts can be multi-faceted. Quick action can mean the difference between whether a home is a complete and total loss or a partial loss. Public adjusting impacts whether a business can quickly get back to operating in order to survive or must close its doors forever.

Much like a banana split which has three scoops of ice cream, the adjusting profession has three types of adjusters: public adjusters, company adjusters and independent adjusters. The NAIC clarified any confusion about their roles several years ago when the Public Adjuster Working Group produced three bulletins, one for each type of adjuster. These bulletins have been relied upon by some state insurance departments, including Pennsylvania, which repurposed the information within educational materials for consumers and posted it on its website. Pennsylvania is highlighted because it is known as the state where the banana split originated and also for the heavenly chocolate syrup to top your scoop.

In a perfect world, all three types of adjusters are property loss experts. However, unlike company adjusters who are in-house at insurance companies, public adjusters must meet testing and continuing education requirements in most states. Public adjusters also have a fiduciary duty imposed upon them, much like attorneys. This means public adjusters hold a required duty of loyalty, good faith and fair dealings if representing an insured during the claim process. Company adjusters do not owe claimants this duty. The duty owed by company adjusters is to the company as their employer, which is an important distinction. Independents adjusters are hired on contract by insurers to adjust claims but operate in a capacity as independent contractors. Independent adjusters are important when insurers need immediate assistance with “boots-on-the-ground” at the site of a property loss, especially during catastrophes and emergencies in order to mitigate loss and process claims. A minority of states require licensing of independent adjusters. Some regulators are asking why public adjusters are licensed in a majority of states and independent adjusters are licensed in only a few.

While this is an interesting issue, other issues are more deserving of attention if the focus is to prevent insured harm. Most concerning is the fraudulent and unlicensed representations by bad actors that happens throughout the country. While contractors are important in the process and most are reputable, some contractors, restoration services and others hold themselves out as licensed public adjusters when they are not. They do so without the education, testing and licensing of public adjusters. Many reputable public adjusters engage in a clean-up of shoddy representation. Claimants do not report the bad actors when they fail to receive finished work, as many are misinformed and unaware it is an insurance licensing issue. The problems arise after the insurer has paid and walked away.

Some contractors and restoration companies hold a public adjuster license in order to wear two hats on the same claim. This dual role creates an inherent conflict of interest. Public adjusters must be loyal as a fiduciary and get the best result for their client, not for themselves. Those acting in dual roles seek payment as a contractor as well as a public adjuster on the same claim. Eleven states now prohibit serving as a public adjuster and a contractor on the same claim to prevent the double dip. Did I say double dip should be illegal? Well, not at Dairy Queen, anyway.


Continued on Page 3
Finally, bad actors who do not want to get licensed have recently been seeking legislation to circumvent the need to be licensed as public adjusters. These recently enacted laws, also known as assignment of benefits, allow a claimant the ability to assign all rights of a loss from an insurer to a contractor, restoration company or unlicensed public adjuster. Assignment of benefits is like eating a bowl of ice cream without a bowl. Without a bowl, maybe we are lucky to get a bite or two of frozen ice cream before it melts and slips through our fingers creating a messy situation. Assignment of benefits removes the benefits of licensing which is like the bowl that holds it together. It might start off okay, but as time goes by after the claim has been paid and work has not been finished, a claimant’s recourse will slip away without a remedy, except through the courts.

The National Association of Public Insurance Adjusters has suggested that regulators might consider creating public adjuster advisory councils to keep tabs on property claim activities, court cases, licensing protocols and to provide advice when emergencies or catastrophes emerge. So, the scoop here is no double dipping and keep it in a bowl. ■

ABOUT THE AUTHOR:

Ann Frohman founded Frohman Law Office LLC, a boutique insurance regulatory firm, now in its eleventh year. Under Frohman’s hands-on leadership, the firm assists clients with specific insurance transactions. In addition, Frohman crafts and implements national strategies for specific needs and carefully navigates the regulatory process for positive results. Frohman’s multifaceted 30 year public/private sector experience is the key. She understands insurer operations and constraints on management teams, having served as a senior executive in an insurance company. She also has a deep experience within state government and its insurance regulations, public policy, and legislative arenas. Her insights into the NAIC structure, as well as its leaders and culture, derive from having served as a state insurance commissioner and deputy director/general counsel of a state insurance department, not to mention her role as administrator of employee benefits and commercial insurance buyer as a state risk manager.