

**Bucking the Trend: The *Revelts* Case and the End to the
Unauthorized Practice of Public Adjusting**

by William Bell

Natural disasters occur with increased frequency each year. In 2012, 920 natural catastrophes¹ caused \$65 billion in insured losses worldwide.² From 2003 to 2012, on average, there were 790 natural catastrophes causing \$56 billion in insured losses.³ Compared to the 30 year average of 630 events causing \$32 billion in insured losses, natural disasters have not only become more prevalent, but also more destructive.⁴

In the wake of these catastrophic events, or any other run-of-the-mill claim-generating event, insured homeowners are particularly vulnerable and looking for help. To this end, licensed public adjusters are available to act on behalf of the insured. Public adjusters are experts on property loss adjustment who work exclusively for the policyholder.⁵ These professionals aid the insured, handling every detail of the insurance claim in order to provide the most equitable and prompt settlement possible.⁶ A public adjuster “inspects the loss site immediately, analyzes the damages, assembles claim support data, reviews the insured’s coverage, determines current replacement costs, and exclusively serves the client, not the insurance company.”⁷

¹ The term “catastrophe” in the property insurance industry denotes a disaster that is unusually severe and where claims are expected to exceed a certain dollar threshold, currently set at \$25 million. Insurance Information Institute, Catastrophes: Insurance Issues, www.iii.org/issues_updates/catastrophes-insurance-issues.html (last visited April 10, 2014).

² Insurance Information Institute, Catastrophes: Global, http://www.iii.org/facts_statistics/catastrophes-global.html (last visited April 10, 2014).

³ *Id.*

⁴ *Id.* The figures for 2013 are 880 events causing \$31 billion of insured losses. These numbers are likely incomplete, however, as insured persons are still filing claims for 2013. *Id.*

⁵ National Association of Public Adjusters (“NAPIA”), www.napia.com (last retrieved April 20, 2014).

⁶ *Id.*

⁷ *Id.*

Unfortunately, however, it has become increasingly popular for storm chasers – unscrupulous contractors, tradesmen, restoration companies, and others – to emerge following a catastrophe and target the victims. They take advantage of the victims in their weakened state by offering to “work with the insurance company” to obtain the highest insurance payment possible and to rebuild or repair the damaged property.⁸ By doing so, these storm chasers engage in the unauthorized practice of public adjusting (“UPPA”) to the disadvantage of the customers on which they prey.

To combat the systemic problem of the UPPA, 45 states and the District of Columbia have enacted comprehensive licensing statutes regulating public insurance adjusters.⁹ Equally important in eradicating the deceptive practice, private citizens and attorneys general have begun bringing lawsuits against those engaged in the UPPA, and insurance departments are issuing circulars and directives cautioning of, and denouncing, the practice.¹⁰ In order to ensure the trend of bucking the UPPA continues, all 50 states should enact vigorous licensing statutes. Furthermore, actions against these unscrupulous characters should be frequent and aggressive. Each action not only targets, punishes, and deters the specific bad actor at play, but it also generates publicity and increases awareness of the deceptive practice.

I. Public Adjusters and the Unauthorized Practice of Public Adjusting

The UPPA occurs when “an individual acts on behalf of or aids in any manner an insured for compensation in the negotiation, adjustment and settlement of coverage and claim benefits in a first-party context without being licensed and under the jurisdiction of

⁸ Brief of National Association of Public Insurance Adjusters as Amicus Curiae Supporting Appellees (“NAPIA Brief”), *Reyelts v. Cross*, No. 13-10896, 2013 WL 6979584, *8-9 (5th Cir. Dec. 26, 2013).

⁹ Licensing and Education Requirements for Public Adjusters, 0110 REGSURVEYS 61 (West Jun. 2013).

¹⁰ *See supra* Part III.

the [applicable state’s department of insurance].”¹¹ Essentially, these storm chasers seek to both represent an insured before an insurance company by negotiating and settling a claim and perform the repair work for the insured. Without prohibitions against the UPPA, these individuals have a financial incentive to “adjust” the insureds claim with the insurer and then perform the minimum amount of repairs necessary.¹² Storm chasers are motivated strictly by profit, not aiding their insured client, and effectively “double-dip” in the insurance proceeds.¹³ They claim both a commission on the insurance proceeds and a fee for the work delivered, all the while providing no enforceable guarantee the work will be completed.¹⁴ All too often, the opportunists arrive following catastrophes, collect their proceeds, and move on to the next catastrophe.¹⁵

The UPPA poses a threat not only to insureds, but also to insurers and the licensed public insurance adjuster profession. For example, insurers unknowingly negotiating with unlicensed contractors purportedly representing the insured are susceptible to disingenuous statements concerning the scope of repairs and the materials to be used.¹⁶ With respect to properly licensed and regulated public insurance adjusters, the UPPA

¹¹ Masood Khan, *Well Adjusted*, United Policyholders, (June 2010), available at http://www.uphelp.org/news_articles/article_welladjusted_June2010.html (last visited April 19, 2014).

¹² NAPIA Brief, *supra* note 8.

¹³ Jason Wolf, *Erasing the Abuse of Unlicensed Public Adjusters*, Claims Journal (Feb. 17, 2014), available at <http://www.claimsjournal.com/magazines/idea-exchange/2014/02/17/244531.htm> (last retrieved Apr. 18, 2014).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Brian Goodman Testimony at the National Association of Insurance Commissioners Summer 2013 National Meeting (August 2013), available at <http://www.napia.com/documents/NAPIA testimony tNAICSummerMeeting2013.pdf> (last retrieved Apr. 21, 2014).

poses a dual threat.¹⁷ First, unlicensed individuals unfairly compete with licensed public adjusters. Public adjusters are regulated professionals who undergo training, examination and certification, subject themselves to ongoing state oversight, and often have to keep up with continuing education requirements.¹⁸ These requirements ensure licensed public adjusters adhere to ethical and regulatory standards.¹⁹

Storm chasers, however, are not subject to oversight or the regulatory directives and prohibitions imposed upon public adjusters.²⁰ For example, in Texas where the Insurance Code protects consumers by preventing public adjusters from soliciting during the disaster, any contractor can prey on the victims when they are most vulnerable – during and immediately following the loss producing event. Accordingly, it is imperative that the UPPA is stopped as, “ironically, the very regulations enacted to protect the insured do not apply to those from whom the insured need the most protection.”²¹

Secondly, the UPPA damages the reputation of all licensed public adjusters. Storm chasers engaged in the UPPA place their own interests above those of the insured, and people can, and often do, impute these actions to all public adjusters. This is particularly damaging to NAPIA and its approximately 115 member firms, which consistently strives to promote the licensed public adjuster’s standard of ethical and loyal representation of their insured clients.²²

¹⁷ *Id.*

¹⁸ *See, e.g., Fla. Stat. § 626.851 et seq. (2012)*

¹⁹ NAPIA Brief, *supra* note 8.

²⁰ Brian Goodman Testimony, *supra* note 16.

²¹ *Id.*

²² *Id.*

To combat these problems and protect the insured, the National Association of Insurance Commissioners (“NAIC”) created a comprehensive licensing statute, the Public Adjuster Licensing Model Act (“Model Act”).²³ The Model Act defines a “public adjuster” as “any person who, for compensation or any other thing of value, acts on behalf of the insured” and governs the qualifications and procedures for the licensing of public adjusters.²⁴ Currently, 45 states and the District of Columbia have either adopted the Model Act in part or in its entirety, or have enacted similar public adjuster licensing legislation.²⁵

Requiring individuals working on behalf of insureds to be licensed insurance adjusters provides protection to the insureds that they might not otherwise have. First, a public adjuster is “obligated to serve with objectivity and complete loyalty the interest of his client alone.”²⁶ Perhaps the most important requirement, this fiduciary duty ensures public adjusters seek the client’s best interest and helps serve as a counterweight to the company or independent adjuster, who owes a similar duty to protect the best interest of the insurer.²⁷ Additionally, these statutes generally require individuals to undergo examination to assure their qualification, meet certain continuing education requirements,

²³ NAIC Model Laws, Regulations and Guidelines, 228-1 (Oct. 2005).

²⁴ *Id.* at 228-1 § 1, 228-2 § 2H.

²⁵ Licensing and Education Requirements for Public Adjusters, 0110 REGSURVEYS 61 (West Jun. 2013). The five states without such licensing statutes are Alabama, Alaska, Arkansas, South Dakota and Wisconsin. *Id.*

²⁶ NAIC Model Laws, Regulations and Guidelines, 228-16 § 18.

²⁷ Josh Shettle, *Shifting Gears Toward Better Enforcement of the Prohibition Against the Unauthorized Practice of Public Adjusting*, Apr. 25, 2012, available at <http://www.napia.com/news/documents/2012PCMAAwardWinnerJoshShettle.pdf> (last retrieved Mar. 15, 2014).

and govern standards of conduct to which the public adjuster must adhere.²⁸ By governing and regulating their conduct, the statutes directly address the problems that the UPPA presents. For instance, Texas law prohibits public adjusters from engaging in activities that cause a conflict of interest and from soliciting insureds when they are most vulnerable, during natural disasters.²⁹

The explosive growth in the UPPA, combined with the evident gaps in enforcement, have made it an urgent crisis calling for prompt action by the National Association of Insurance Commissioners (“NAIC”) and state governments alike.³⁰ Eradicating the UPPA will take intervention by state attorneys general and/or other prosecutorial offices, state legislators, and a concerted effort by the insurance industry.

III. Enforcement Actions the UPPA

It is only within the last few years that the UPPA has started garnering the attention it warrants. Consumers, attorneys general, and other prosecutorial offices have begun bringing actions against those engaged in the UPPA. These lawsuits, combined with similar directives from state insurance departments, are an effective way to deter, curtail, and eradicate the UPPA. They target specific bad actors and bar them from engaging in the UPPA. More importantly, however, each lawsuit brings increased attention to the illegality of the UPPA, the prevalence with which it exists, and the dangers this improper conduct presents. Increased awareness about the UPPA is essential

²⁸ See, e.g., Illinois Insurance Code, 215 ILCS §§ 1501-1610 (2011).

²⁹ See, e.g., Texas Ins. Code §§ 4102.151 (stating a public adjuster “may not solicit or attempt to solicit a client for employment during the progress of a loss-producing natural disaster occurrence); see, also, § 4102.158 (prohibiting public adjusters from engaging in activities that present a conflict of interest, including participating “in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder”).

³⁰ Brian Goodman Testimony, *supra* note 16.

as, ultimately, having educated consumers that are able to spot these storm chasers and insurers that refuse to deal with them is the best way to eliminate the practice.

A. Private Action Against Contractors Engaged in the UPPA: the *Reyelts* Case

Every year in Texas, hailstorms cause an inordinate amount of property damage. Following these storms, homeowners in despair have countless flyers taped to their front door, sign advertisements posted in their yard, and their phones and doorbells ring constantly. Often, these are efforts by storm chasers making an all too familiar pitch: “Let us work with your insurance carrier to ensure your hail damage claim is fully paid, and then let us reroof your home with the insurance money we recover.”³¹ This practice, however, violates Texas law and, according to a 2013 Texas federal court opinion, the resulting contract is illegal, void, and unenforceable.³²

Texas adopted the Texas Public Insurance Adjuster Licensing Statute in 2003 and, since then, has required individuals to be licensed public adjusters to represent an insured and adjust claims on the insured’s behalf.³³ The statute allows public adjusters “to negotiate or effect the settlement of a claim for loss or damage under any policy,” but, as noted above, prohibits the license holder from engaging in activity that constitutes a conflict of interest.³⁴ Such a conflict arises where the license holder participates in the

³¹ Todd M. Tippett, *Roofing Contractors, Don’t Mess with Texas Insureds!*, Law360, November 15, 2013, available at <http://www.law360.com/articles/489103/roofing-contractors-don-t-mess-with-texas-insureds> (last retrieved April 15, 2014).

³² *Reyelts v. Cross*, 968 F. Supp. 2d 835, 843-44 (N.D. Tex. 2013), aff’d, No. 13–10896, 2014 WL 1712277, at *1 (5th Cir. May 1, 2014).

³³ Tex. Ins. Code § 4102.051.

³⁴ Tex. Ins. Code §§ 4102.001(3) and 4102.158.

construction or repair of the property that is the subject of the claim being adjusted.³⁵ Unfortunately, these provisions have historically failed at stopping roofers and contractors that are not licensed as public adjusters from engaging in similar conduct.³⁶

A 2013 United States District Court for the Northern District of Texas case and further legislative action, however, have given consumers a weapon in the fight against the UPPA. In *Reyelts v. Cross*, the court granted default judgment for the plaintiff-homeowners against a roofing and construction company, Lon Smith Roofing and Construction.³⁷ The court ruled Lon Smith Roofing and Construction's breach of the Texas Public Insurance Adjuster Licensing Statute constituted a deceptive trade practice in violation of the Texas Deceptive Trade Practices Act ("DTPA")³⁸ and rendered the contract illegal, void, and unenforceable.³⁹

The homeowners in *Reyelts* sustained hail damage during a May 2011 storm.⁴⁰ Soon thereafter, a representative of Lon Smith Roofing and Construction targeted the homeowners, offering their roofing services and assistance with the insurance claim.⁴¹ Having no special knowledge about roofing or hail damage, the homeowners agreed to work with Lon Smith Roofing and Construction and signed an agreement stipulating: the "homeowner[s] authorizes Lon Smith Roofing and Construction . . . to pursue

³⁵ Tex. Ins. Code § 4102.158(1).

³⁶ Todd M. Tippet, *supra* note 29.

³⁷ 968 F. Supp. 2d at 838.

³⁸ Texas Business and Commerce Code § 17.41 *et seq.*

³⁹ 968 F. Supp. 2d at 843-45.

⁴⁰ *Id.* at 839.

⁴¹ *Id.*

homeowners' best interest for all repairs, at a price agreeable to the insurance company and [Lon Smith Roofing and Construction]."⁴² The agreement purportedly gave Lon Smith Roofing and Construction the authority and obligation to act on the homeowners' behalf in negotiating for and effecting the settlement of a claim for the loss or damage to the homeowners' roof under the insurance policy covering the home.⁴³ Furthermore, the agreement supposedly authorized the "insurance company and/or mortgage company to make payment for completed repairs directly to [Lon Smith Roofing and Construction]."⁴⁴ Accordingly, the court found that, by signing the agreement, the homeowner "reasonably believed she had authorized the Lon Smith Defendants to act on the [homeowners'] behalf in coming to an agreement with [her insurance provider]."⁴⁵

Thereafter, Lon Smith Roofing and Construction completed the repair work for the homeowners and demanded final payment from them, claiming they were withholding the insurance proceeds.⁴⁶ Unsure why the insurance carrier failed to pay Lon Smith Roofing and Construction, the homeowners contacted their carrier directly.⁴⁷ Upon doing so, they learned Lon Smith Roofing and Construction failed to: contact the insurance carrier in an attempt to secure a settlement on behalf of the insured, reach an agreement with the carrier concerning the price it would pay for the roof repairs, and

⁴² *Id.*

⁴³ *Id.* at 840.

⁴⁴ *Id.* at 839.

⁴⁵ *Id.* at 840.

⁴⁶ *Id.* at 842.

⁴⁷ *Id.*

obtain payment from the carrier for the roof repair.⁴⁸ Because the insurance company was not contacted prior to the completion of the repairs, it did not have the opportunity to evaluate the reported damage and refused to make payment.⁴⁹

Ultimately, the federal court declared the contract between the homeowners and Lon Smith Roofing and Construction illegal in its entirety, void, and unenforceable.⁵⁰ Lon Smith Roofing and Construction violated Texas Insurance Code Chapter 4102's prohibition of the unlicensed practice of public adjusting.⁵¹ Moreover, the court found that, by violating the Public Insurance Adjuster Licensing Act, the defendants engaged in false, misleading, and deceptive acts and practices in violation of Section 17.46 of the Deceptive Trade Practices Act.⁵² As a result, the court held the homeowners were not liable for any payment for services rendered under the agreement with Lon Smith Roofing and Construction.⁵³ More significantly, the court ordered Lon Smith Roofing and Construction to pay the homeowners more than \$225,000 in actual damages, mental anguish, and attorneys' fees.⁵⁴

In addition to the *Reyelts* case, the Texas Legislature has taken further action to eliminate disingenuous storm chasing activity. Because of the apparent gaps in enforcement, the Texas Legislature passed House Bill 1183 in May 2013. The bill notes that roofers acting as insurance adjusters have a conflict of interest that might prevent

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 843-44.

⁵¹ *Id.*

⁵² *Id.* at 844.

⁵³ *Id.*

⁵⁴ *Id.* at 846-52.

them from acting in the best interest of the consumer. Accordingly, House Bill 1183 makes clear that a roofing contractor “cannot adjust or advertise to adjust claims for properties which the contractor is the contractor of record, regardless of whether the contractor is licensed as a public or private adjuster.”⁵⁵ The new law provides that roofing contractors and public adjusters that violate these provisions are subject to disciplinary proceedings, fines or penalties, and loss of licensure.⁵⁶

The combination of judicial enforcement of the public adjuster licensing requirement through Texas’ Deceptive Trade Practices Act and the increased clarity in the legislation outlawing the UPPA seemingly equips Texas to handle this problem going forward. With the hail season just beginning in Texas, hopefully the new legislation and recent *Reyelts* decision will lead to less storm chasing and bring about change in how roofers market and provide their services. To the extent the practice of storm chasing continues this year, *Reyelts* should provide a blue print for attacking these unscrupulous individuals in court.

B. Attorney General Suits Against the UPPA and Similar Actions by Other Prosecutorial Offices

In addition to private actions by the insured against those engaging in the UPPA, Attorneys General are becoming more aware of the crisis and have started bringing

⁵⁵ H.B. 1183 (adopted May 13, 2013; effective Sep. 1, 2013). H.B. 1183 modified Ins. Code. § 4101.251 to read:

- (a) Prohibits an insurance adjuster licensed under Chapter 4101 (Insurance Adjusters) from adjusting a loss related to roofing damage on behalf of an insurer if the adjuster is a roofing contractor or otherwise provides roofing services or roofing products for compensation, or is a controlling person in a roofing-related business.
- (b) Prohibits a roofing contractor from acting as an adjuster or advertising to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license under this chapter.

⁵⁶ Tex. Ins. Code §§ 4101.201-203; §§ 4101.201-204.

lawsuits against these contractors. So far, the Attorneys General for Illinois, Kansas, Ohio, and Texas have brought such actions. Additionally, the Chief Financial Officer of Florida has initiated actions against, and entered into Consent Orders with, those engaged in the UPPA. These actions are a useful tool in the fight against the UPPA and will be instrumental in ending the crisis.

Illinois Attorney General Lisa Madigan has cracked down against storm chasers and, since April 2012, has brought at least nine lawsuits against contractors engaging in the UPPA.⁵⁷ On April 23, 2012, Madigan filed lawsuits against four home repair contractors for operating as unlicensed public adjusters and defrauding consumers of more than \$165,000 by not completing the promised work.⁵⁸ Similarly, on September 20, 2012, Madigan filled another five lawsuits following a sweep of fraudulent home repair businesses that cheated Chicago and Central Illinois residents out of more than \$365,000.⁵⁹ In each case, the complaints alleged substantially similar facts – following a disaster, the con artists flood into a local community to prey on stressed homeowners by offering to handle the insurance claims process and perform repair work, which is never completed.⁶⁰

⁵⁷ See, e.g., *Illinois v. Team-Mark Construction, Inc.*, No. 2012-CH-14818, 2012 WL 1552469 (Ill. Cir. Apr. 23, 2012) (Trial Pleading) (alleging the defendants held themselves as public adjusters despite not having the required public adjuster license); *Illinois v. North Point Exteriors, Inc.*, No. 2012-CH-35467, 2012 WL 4746097 (Ill. Cir. Sep. 20, 2012) (Trial Pleading) (alleging the defendant contractors engaged in the practice of public adjusting within the meaning of the Public Adjusters Law without being licensed as such).

⁵⁸ April 23, 2012 Press Release, *Attorney General Files Four Lawsuits, Warns Consumers to Avoid Unlicensed Home Repair Contractors*, Illinois Attorney General, April 23, 2012, available at http://www.ag.state.il.us/press room/2012_04/20120423.html (last retrieved April 20, 2014).

⁵⁹ September 20, 2012 Press Release, *Madigan Files Lawsuits in Sweep of Fraudulent Home Repair Companies*, Illinois Attorney General, September 20, 2012, available at http://www.ag.state.il.us/pressroom/2012_09/2012 0920.html (last retrieved April 20, 2014).

⁶⁰ April 23, 2012 Press Release, *supra* note 58.

For instance, in *Illinois v. Blue Restorations, Inc.*, the complaint alleged:

Defendant Blue Rose Restorations and its president, Dominique Villarreal, are storm chasers. Employees or other representatives of the Defendants follow in the wake of severe weather offering and selling home repair services to Illinois consumers whose homes have been damaged by the preceding storm. As part of its solicitation, Defendants tout their expertise in dealing with insurance companies, and offer to advocate on behalf of consumers in adjusting and negotiating the insurance claim, even though defendants are not licensed public adjusters.⁶¹

As evidence of Blue Rose Restorations' UPPA, Madigan cited the defendant's website, which claimed they were "experts" in the specialized field of insurance coverage and offered "complete start to finish service with insurance claim losses."⁶² In *Blue Rose Restorations*, and the other lawsuits against storm chasers, Madigan sought restitution on behalf of the homeowners who suffered losses, a permanent injunction against the defendants from operating or working in the home repair trade in Illinois, the cancellation of any pending contracts, and an array of civil penalties ranging from \$10,000 to \$50,000 per violation.⁶³

Much like Illinois Attorney General Lisa Madigan, Florida's Chief Financial Officer Jeff Atwater has taken a similar hardline approach against those engaged in the UPPA. Since 2011, Atwater has entered numerous consent orders with construction and restoration companies holding themselves out as businesses providing public adjusting

⁶¹ *Illinois v. Blue Rose Restorations, Inc.*, No. 2012-CH-14810, 2012 WL 1552480, ¶1 (Ill. Cir. Apr. 23, 2012) (Trial Pleading).

⁶² *Blue Rose Restorations, Inc.*, 2012 WL at ¶ 13.

⁶³ *Blue Rose Restorations, Inc.*, 2012 WL at ¶¶ 113A-M, and 118A-K. *See also*, April 23, 2012 Press Release, *supra* note 60 (stating Madigan is asking the court to ban the defendants from working in the repair trade in Illinois, cancel pending contracts, obtain restitution for affected consumers, and impose an array of civil penalties); September 20, 2012 Press Release, *supra* note 59 (depicting the relief Attorney General Madigan requested from the court).

services without a license to do so.⁶⁴ By entering these consent orders, the respondents agree to cease and desist from all activities that require a public adjuster's license and from engaging in the UPPA generally.⁶⁵ Additionally, these orders often require the parties to pay a civil fine.⁶⁶ Moreover, the orders stipulate that any future conduct constituting the UPPA is a violation of the consent order, for which they are subject to a fine of up to \$50,000.⁶⁷ These consent orders are useful in the fight against the UPPA as they allow Florida's Department of Financial Services to enter formal agreements with the contractors through which it can fine the contractors for their past violations and stipulate that they agree to not engage in the UPPA going forward, all the while avoiding a lengthy litigation process.

C. Insurance Department Circulars and Directives Denouncing the UPPA

Similarly, in the last few years, state insurance department have come to recognize the problem of the UPPA and have started speaking out against it. At least five

⁶⁴ See, e.g., *In the Matter of American Building Contractors Insurance Restoration Services, Inc.*, Case No. 110396-10-AG (Apr. 25, 2011).

⁶⁵ For example, in the consent order with *Emergency Services 24, Inc.*, the company agreed to cease and desist from:

- (1) Advertising themselves as a public adjuster.
- (2) Holding themselves out as a public adjuster.
- (3) Acting as a public adjuster.
- (4) Preparing, completing, or filing an insurance claim form or forms for an insured or third-party claimant.
- (5) Initiating settlement negotiations for loss or damage covered by an insurance contract.
- (6) Engaging in claims handling.
- (7) Entering into an agreement, or contract, proposal, or similar document, with clients that grant the Respondents authority over the client's insurance claim or insurance-related matters.
- (8) Using the following or similar phrases on websites and advertisements: "We represent you the consumers, and handle the insurance claims and adjusters on your behalf."
- (9) Routinely requesting from the insurer a copy of the insured's policy, declaration page stating policy limits, and a statement of policy coverage defense available to the insurer.

In the Matter of Emergency Services 24, Inc., Case No. 124209-12-AG (Sep. 5, 2012).

⁶⁶ See, *American Building Contractors Insurance Restoration Inc.*, *supra* note 64 (ordering respondent to pay a fine of \$2,500 within thirty days of the issuance of the consent order).

⁶⁷ See *Id.*

state insurance departments – Oklahoma, Minnesota, North Carolina, Ohio and Texas – have issued circulars or directives denouncing the UPPA in an effort to curtail it.⁶⁸

These orders and directives are important as they increase awareness about the problem, signify the insurance department’s formal renouncement of the UPPA, and stipulate its stance on what conduct is legal and what is not.

For instance, in a May 27, 2010 special notice bulletin, Oklahoma Insurance Commissioner Kim Holland discussed the increasing complaints regarding roofing contractors following wind and hail storms. In the bulletin, the Commissioner stated, contractors “that advise to be *claim specialists, claim analysts*, who refer to *denied claims, deductibles*, or assert they *deal with insurance companies* in their advertisements are acting as unlicensed public adjusters.”⁶⁹ The directive continued to state that, while it is legal for contractors to approach homeowners and offer an opinion as to the cause of the damage and an estimate to repair it, they cannot participate in the claims process or advertise to be claim specialists.⁷⁰ Rather, the bulletin stated, one must be licensed as a public adjuster in order to negotiate and act as an intermediary between the insured and the insurer.⁷¹ Lastly, the bulletin stipulated persons violating the Oklahoma Insurance Adjusters Licensing Act are subjected to disciplinary action and/or a civil fine and it encouraged insurers to make their staff and clients aware of the Department’s concerns.

⁶⁸ Brian Goodman Speech, *supra* note 16. See, e.g., Texas Department of Insurance, *Commissioner’s Bulletin #B-0017-12 re Adjusting Claims by Unlicensed Individuals and Entities*, June 26, 2012 available at <http://www.tdi.texas.gov/bulletins/2012/cc16.html> (last retrieved April 22, 2014).

⁶⁹ Kim Holland, *Special Notice re Roofing Contractors*, Oklahoma Insurance Department, May 27, 2010 available at <https://www.ok.gov/oid/documents/Roofing%20Contractor%20Bulletin.pdf> (last retrieved April 18, 2014).

⁷⁰ *Id.*

⁷¹ *Id.*

The insurance departments for Minnesota, Ohio, Texas and North Carolina have issued similar notices and circulars. These directives are applaudable and are essential in the fight against the UPPA going forward. First, through these directives, the insurance departments formally denounce the UPPA. Additionally, they advise contractors, insurers, and consumers alike on the insurance department's views regarding what contractors can and cannot do. To this end, these directives are important because they increase public awareness regarding the deceptive practice and offer tips to help families and business avoid being duped by dishonest contractors.

Conclusion

The public insurance adjusting industry should continue down the current path to combat the unauthorized practice of public adjusting. Unlicensed, unregulated, untrained and unethical players pose a serious danger to insureds, insurers, and the public insurance adjusting industry. The best and most efficient way to eradicate the UPPA is to increase awareness of and appreciation for this problem among consumers and insurance professionals. Private actions against those engaged in this unscrupulous activity, combined with lawsuits by state officials, should act as a significant deterrent. Moreover, each case filed garners increased media attention thereby increasing cognizance of the crisis. Similarly, insurance department directives will be instrumental in the solution as they are another medium states can utilize to warn people of the UPPA and offer tips on how to avoid be scammed.