

Dealing with the Unlicensed (UPPA) and the Effects of Assignments of Benefits (AOB)

Ann Frohman, Esq.
Frohman Law Office LLC
ann@frohmanlaw.com
402.438.6612

Brian Goodman, Esq.
Kramon & Graham PA
bgoodman@kg-law.com
410.319.0529

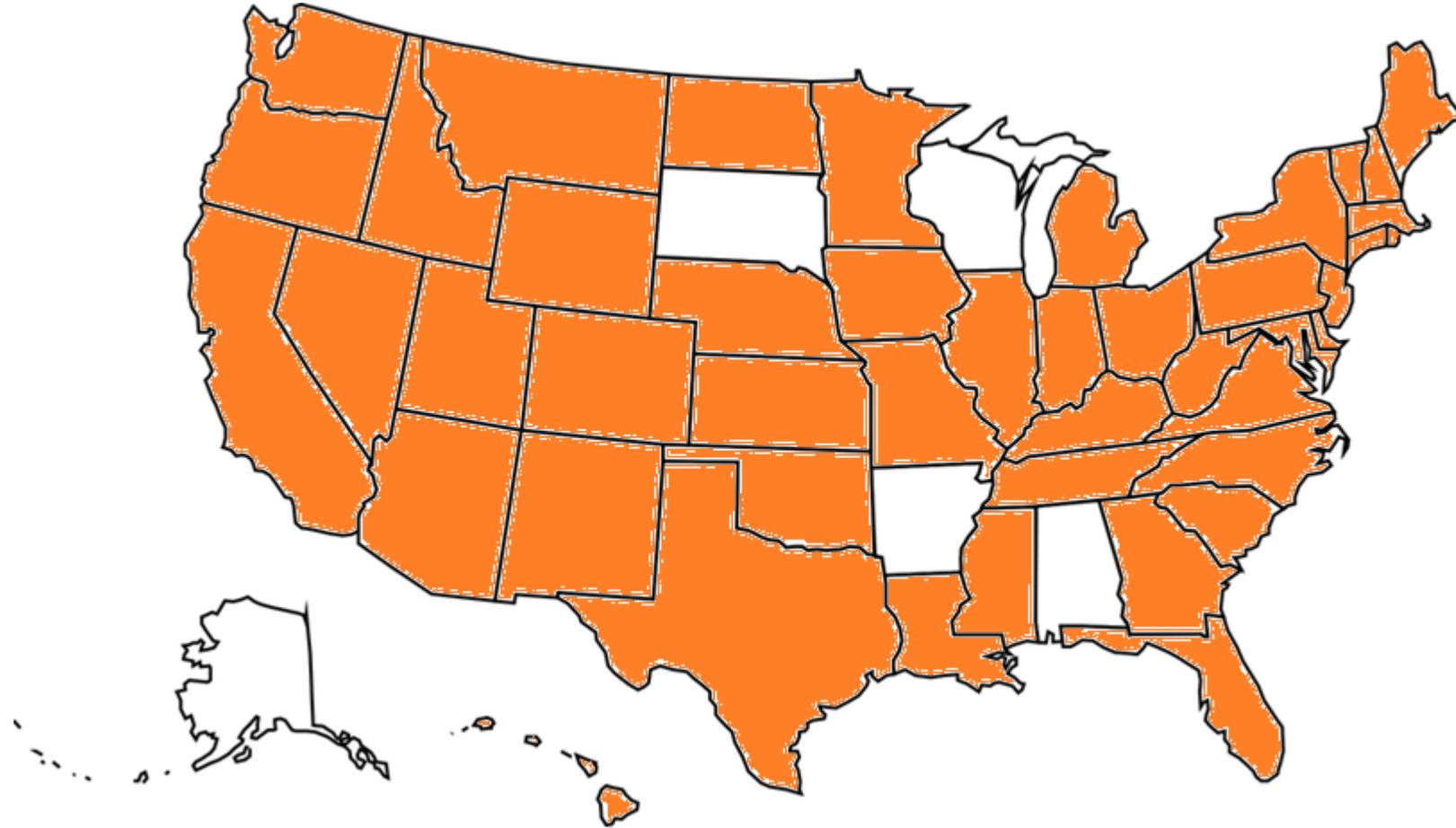


About NAPIA

- ▶ **The National Association of Public Insurance Adjusters** is the oldest association of its kind in the United States serving the public adjuster profession since 1967 and striving for excellence in the practice of public adjusting. Its members are experts primarily focused on complex commercial claims and some residential claims services. We have joined together for the express purpose of providing professional education and promoting a rigid code of conduct and ethics, to ensure best representation of the policyholder in the claims process. There are approximately 600 members in the organization.



Licensed States vs. Unlicensed States



NAIC Model Law 228 – Public Adjuster Licensing Model Act

- ▶ Requires licensure to act as a public adjuster
- ▶ Applicants for a public adjuster license are required to pass a written exam and submit an application under penalty of perjury
- ▶ Standardizes continuing education for licensees to renew public adjuster license
- ▶ Lays out requirements for written contracts between a public adjuster and insured to include such things as description of services and fees to be received for services, and prohibits a public adjuster from collecting their entire fee from the first check received from a company rather than a percentage of each check
- ▶ States explicitly the standards of conduct for a public adjuster
- ▶ Enacted in Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, North Carolina, Tennessee, Virginia



UPPA as a Crime

- ▶ UPPA is a crime in 20 states



Do You Need a Public Adjusters License?

What is a public adjuster?

A public adjuster is a person or business that helps a policyholder with an insurance claim. Public adjusters are hired by the policyholder; they are not employees of insurance companies. All public adjusters must be licensed by the Pennsylvania Insurance Department.



**CONTRACTORS -
AVOID UNLICENSED ACTIVITY.**

CONTRACTORS CANNOT ACT AS A PUBLIC ADJUSTER UNLESS THEY ARE LICENSED. INAPPROPRIATE PRACTICES CAN OCCUR, SO BEFORE YOU OFFER TO HELP SOMEONE WITH THEIR CLAIM, THINK ABOUT THE THINGS YOU DON'T WANT TO DO:

1. **DON'T advertise** that you can help with the claims process unless you are a public adjuster.
2. **DON'T interpret** an insurance policy unless you are a public adjuster.
3. **DON'T negotiate** with an insurance company. You need to be licensed to negotiate on behalf of a policyholder.
4. **DON'T advertise** that you can get someone more money from an insurance company. If you cannot negotiate, you cannot claim that you can get someone a better settlement.
5. **DON'T claim** your services may be free due to insurance coverage. The services you provide and the coverage provided by the insurance company should not be linked; it implies that you have a relationship with the insurance company.



Public Adjuster Working Group (PAWG) Bulletins

- ▶ At the NAIC Summer meeting in August in Boston, the NAIC's Executive/Plenary committee adopted three bulletins prepared by PAWG:
 - ▶ Public Adjuster Consumer Outreach Notice
 - ▶ Notice to Contractors, Advisory for Home Improvement Contractors and Salesmen
 - ▶ Notice to Property/Casualty Insurance Companies



Consumer Outreach Notice

Dealing with the loss or damage to your home, contents or other property after a major storm, hurricane, fire or theft can be overwhelming. It is important that you, the consumer, take steps to protect yourself and your property so that you are able to recover from that loss.

While many consumers are able to resolve their property claims by dealing with their insurance company and the assigned adjuster on their own, sometimes consumers or businesses will decide they would prefer that a licensed insurance professional handle the insurance claim on their behalf. These people who represent you, the policyholder, with regard to an insurance claim are known as public adjusters. You can hire a public adjuster to act on your behalf to process and negotiate your claim with the insurance company.

Drafting note: Some states do not limit public adjusters to only first-party claims. In states that allow public adjusters to represent third-party claimants, the terms of this notice should be revised to reflect that state's law.

A public adjuster is an insurance claim adjuster who acts as an advocate for you, the policyholder, in appraising and negotiating a first party property insurance claim. Primarily, a public adjuster appraises the damage, prepares an estimate for the damage to the building or structure, prepares an inventory of the contents or personal property claim, and processes other claim documentation. A public adjuster also advises and assists the policyholder, and in that capacity not only explains your positions to the insurance company, but also conveys and explains the insurance company's positions to you. A public adjuster will read the insurance policy to determine coverages and negotiate with the insurance company's adjuster. Further, as an advisor and assistant to the policyholder, the public adjuster should make sure that you understand your rights and duties under the insurance policy, and that you meet the various deadlines and other technical requirements of the insurance policy and otherwise comply with all of the terms and conditions of the policy.

A public adjuster is different from a claims adjuster that works for the insurance company as the public adjuster works for you, the policyholder, and is paid by you, not the insurance company. A public adjuster acts as your representative in dealings with the insurance company.

A public adjuster can charge a flat fee or charge a fee that is based upon a percentage of the settlement received from your insurer. The fee is paid by you, the policyholder, and not your insurer. For any questions pertaining to fee arrangements for public adjusters, contact the [Insert Jurisdiction] insurance department. You should carefully review any document presented to you by any party during the insurance claim settlement process, especially if you are being asked to sign the document.

[Drafting note: Some states may have specific laws related to the amount that a public adjuster may charge, either based on a certain percentage or whether the claim is the result of a catastrophe, or both. The above paragraph should be amended to reflect these laws.]



Consumer Outreach Notice

If you hire a public adjuster, you should understand that your insurance company may or may not agree with the estimates of damages prepared by the public adjuster. However, public adjusters are licensed to negotiate on your behalf to ensure the insurance company settles your claim in accordance with the terms and conditions of the policy it issued to you.

A public adjuster's main responsibilities are to protect the interest of you, the policyholder, and advocate on your behalf with the insurance company. While not an all-inclusive list, some examples of these actions are:

- Evaluate an insurance policy in order to determine what coverage(s) may be applicable.
- Inform you, the policyholder, of the policy's deadlines, technical requirements and other terms and conditions, and otherwise advise you on your rights and duties under the policy.
- Research, detail and substantiate damage to buildings and contents and any additional expenses that you incur.
- Evaluate business interruption losses and extra expense claims for businesses.
- Prepare, document and support the claim(s) on your behalf.
- Provide the insurance company's loss estimates and evaluations and proposed resolutions to you and explain them to you, as well as what the differences are, if any, between the insurance company's estimates and the estimates submitted on your behalf.
- Convey and explain the insurance company's other positions, such as any coverage positions, to you.
- Convey and explain your positions on the amount of loss, any coverage disputes, etc., to the insurance company.
- Negotiate a settlement with the insurance company on your behalf.
- Assist you in understanding, preparing and submitting any required documents related to the claim, as well as assist you in the appropriate distribution of settlement monies so that your interest and any other interest, such as a mortgagee's interest in the building, are protected.



Consumer Outreach Notice

It is against the law in this state for a contractor or other vendor to act as a public adjuster unless licensed as a public adjuster.

What contractors **can do** without a public adjuster license:

1. Approach a homeowner or business owner offering repair or reconstruction services.
2. Offer an opinion to a policyholder as to whether damage is from a storm or other incident normally covered by a homeowners policy.
3. Prepare an estimate and scope of work for the loss.
4. Discuss the estimate or scope of work with their customer.
5. Recommend that the policyholder file an insurance claim with their insurer.
6. Be present when an insurer's adjuster inspects the damage.
7. Answer questions the policyholder or the insurer's adjuster has about the estimates.

What contractors **cannot do**, unless they are licensed as a public adjuster by the (Insert State Department of Insurance):

1. Investigate, appraise, evaluate, give advice, advocate on behalf of or assist their customer in adjusting a claim.
2. Prepare the insurance claim for their customer.
3. Negotiate the claim with the insurance company on their customer's behalf.
4. Offer to review the insurance policy or advise their customer on the insurance policy's coverage.
5. Advertise or provide written materials that they can negotiate or investigate a claim on their customer's behalf. This includes advertising to be "claim specialists" or "claim analysts" or any other similar terms, or advertising or claiming that they can "deal with insurance companies" or in any way increase the claim settlement amount for the policyholder.

[If a state criminalizes the unauthorized practice of public adjusting: Performing the acts of a public adjuster without a license is a misdemeanor criminal act in this state.]



Consumer Outreach Notice

When you, the policyholder, are approached by a person or company who asks you to let them handle your insurance claim, you should make sure that this person or company is a licensed public adjuster, and not someone who is not licensed or qualified to handle an insurance claim on your behalf. A number of unlicensed and unqualified persons and companies—such as roofers, contractors, emergency service providers, etc.—present themselves and illegally operate as “de facto public adjusters.” However, they lack the qualifications and licensing to handle an insurance claim and are likely not to handle it in a competent fashion or in a fashion in your best interest. Also, roofers, contractors, emergency service providers, etc.—who are looking to be paid for their work out of the policyholder’s insurance benefits—have a conflict of interest with you in terms of maximizing what they receive for their work or alleged work as opposed to what you receive for the damages to your property due to the loss. Again, you should make sure that the person or entity that you engage to handle your claim is both licensed and qualified to do so and does not have an improper conflict of interest.

What to watch out for:

[If a state has a “conflict of interest” law] It is against the law in this state for a public adjuster to act as an adjuster and contractor on the same claim. If your contractor or roofer advertises or offers to perform any of the services listed in the bullet points above, they are acting as a public adjuster in violation of the law. Please report such actions to the [Insert Jurisdiction] insurance department.

[If a state has an “unlicensed public adjuster law”] It is against the law in this state for an insurance company to engage in claim negotiations or settlement discussions (of a claim involving loss or damage covered by an insurance contract) with an unlicensed public adjuster acting on behalf of a policyholder. If you hire a public adjuster, please contact the insurance department in this state to ensure that he or she holds and active public adjuster license.

[Drafting note: state laws related to conflicts of interest vary greatly, so each state should amend the above paragraph to appropriately reflect that state’s law.]



Notice to Contractors

If you are a contractor and a customer asks you to help with an insurance claim, here is what you can and cannot do according to the laws of (Insert Jurisdiction):

What contractors **can do** without a public adjuster license:

1. Approach a homeowner or business owner offering repair or reconstruction services.
2. Offer an opinion to a policyholder as to whether damage is from a storm or other incident normally covered by a homeowners policy.
3. Prepare an estimate and scope of work for the loss.
4. Discuss the estimate or scope of work with their customer.
5. Recommend that the policyholder file an insurance claim with his or her insurer.
6. Be present when an insurer's adjuster inspects the damage.
7. Answer questions the insurer or the insurer's adjuster has about the estimates.

What contractors **cannot do**, unless they are licensed as a public adjuster by the (Insert State Department of Insurance):

1. Investigate, appraise, evaluate, give advice, advocate on behalf of or assist their customer in adjusting a claim.
2. Prepare the insurance claim for their customer.
3. Negotiate the claim with the insurance company on their customer's behalf.
4. Offer to review the insurance policy or advise their customer on the insurance policy's coverage.
5. Advertise or provide written materials that they can negotiate or investigate a claim on their customer's behalf. This includes advertising to be "claim specialists" or "claim analysts," or any other similar terms, or advertising or claiming that they can "deal with insurance companies" or in any way increase the claim settlement amount for the policyholder.

Drafting note: States that have a law on the books prohibiting a public adjuster from acting as both a public adjuster and a contractor should amend the above prohibitions to reflect that law.



Notice to Contractors

An individual who is hired by a property owner to help resolve a property insurance claim directly with an insurance company is known as public adjuster.

Option One:

Insert Reference to State Public Adjuster Definition.

Option Two:

According to the NAIC's *Public Adjuster Licensing Model Act* (#228), "public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

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

In order to become a public adjuster, one must obtain a license from the (Insert State Department of Insurance). Additional information on how to obtain a license may be found at (Insert Appropriate State Weblink).

Drafting note: Some states do not limit public adjusters to only first-party claims. In states that allow public adjusters to represent third-party claimants, the terms of this notice should be revised to reflect that state's law.



Notice to Property/Casualty Insurance Companies

The (Insert State Department of Insurance) has become increasingly aware that consumers are often confused by the role of adjusters in the claims settlement process. While adjusters bring important assistance and lend value to policyholders, policyholders often lack a solid grasp of the types of adjusters, their authorizations, their roles, fees and potential conflicts that can arise. The Department of Insurance is asking insurance companies to assess and implement methods to improve policyholder education about the role of adjusters.

Company Materials

Insurance companies are encouraged to develop disclosures for policyholders to decode the adjuster jargon and adequately and fairly explain the differences between company adjusters, independent adjusters and public adjusters, and the different role of each in the claim settlement process. It is good to identify who each represents and how their fees are paid. While references to statutory definitions are appropriate, these definitions can be complicated. When reasonably possible, insurers should provide definitions in plain and ordinary language and include examples of how each type of adjuster participates in the claim process.

Insurance companies are cautioned against hiring an individual or entity to provide construction services or other claim-related services (collectively “contractors”) if the individual or entity is also acting as any type of adjuster on the same claim. Disclosures should warn customers of a conflict of interest when a contractor attempts to receive payment as an adjuster and also receive a fee for providing contracting services. Insurance companies should encourage policyholders to confirm that the individual helping to settle the claim is properly licensed as an adjuster or is a company employee who does not need to be licensed. Insurance companies should also communicate to policyholders the role that insurance producers have in the adjusting process.

Drafting note: States that have a law on the books prohibiting a public adjuster from acting as both a public adjuster and a contractor should amend the above provisions to reflect that law.



Notice to Property/Casualty Insurance Companies

Adjusters

Insurance companies should make sure that company adjusters and independent adjusters used to settle claims are trained to explain the distinctions between their services and those of the public adjuster. In most cases, company and independent adjusters represent the company and are paid by the company whereas public adjusters represent the policyholder and are paid by the policyholder, often from the funds received.

Insurance companies must/should verify the license of anyone performing the tasks of a public adjuster on claim, as well as encourage all adjusters to explain their authority and what they are restricted from doing when assisting with a claim. Insurance companies should encourage all adjusters to report suspected unauthorized activity to their state insurance department.

Insurance Producers

Insurance companies should communicate with their sales, marketing and distribution teams about how adjusters may be involved in the claim handling process. Insurance producers often are the first to receive notification of a claim; however, insurance producers are not licensed as adjusters and are limited in how they can assist a policyholder.

Bad Actors

Insurance companies should encourage all stakeholders to be aware of potential fraudulent activities that may arise during a claim. Adjusters should report suspected fraudulent claim activity to their company's Special Investigation Unit and state insurance department.



UPPA Legislation

- ▶ Rhode Island : 27 R.I. Gen. Laws Ann. § 27-9.1-4(26)
 - ▶ Made it an unfair claims practice for an insurer to negotiate a settlement or claim with an unlicensed public adjuster acting on behalf of an insured
 - ▶ Enacted 2017
- ▶ Montana: Mont. Code Ann. § 33-17-102
 - ▶ (a) "Public adjuster" means an adjuster retained by and representing the interests of the insured.
 - ▶ (b) The term does not include a person who provides an estimate of work to an insurer on behalf of an insured as long as the insured is notified of all communications between the person and the insurer related to the estimates.



UPPA Case Law

- ▶ Lon Smith & Associates v. Key
 - ▶ Supreme Court of Texas
- ▶ Hill Roofing and Construction v. Spracklen
 - ▶ Texas Court of Appeals
- ▶ CSI Renovations, LLC, Texas



Catastrophe Administration

- ▶ Quick Strike Force
- ▶ Florida
- ▶ Minnesota
- ▶ Indiana
- ▶ Montana



Catastrophe Administration

AFTER THE STORM



1

- Contact your insurance company as soon as possible. Follow the instructions given by your insurer and keep a record of the people you spoke with. Records should include date, name and title.
- Save all your receipts. Be sure to give your insurance company all the information it needs or your claim may be delayed.

2

- Take photographs/video before clean up or repairs.

- After you've documented the damage, make the repairs necessary to prevent further damage. **DO NOT** make any permanent repairs before the insurance company is able to inspect the damage and your insurance carrier approves the repairs.

3

- Always ask questions if you don't understand.

- Don't rush to a settlement. If possible, determine what it will cost to repair your property before you meet with an insurance company representative who will assess the damage to your property. If you and your insurance company disagree on the offer made to repair your property, be prepared to negotiate if necessary.
- If your claim is denied, review the terms of your policy for what is or is not covered. You may also file an appeal to your insurance company's claim manager. If questions remain, you should contact the Insurance Department, Bureau of Consumer Services.

BE CAREFUL

Natural disasters can be a magnet for dishonest contractors. Be wary of anyone who knocks at your door and offers (or solicits) to do your home repairs. Take these steps to protect yourself:



- If an individual presents himself as a public adjuster, ask for his licensing information. A public adjuster is a professional claims handler, licensed and regulated by the state. A public adjuster is employed by the policyholder to assist with the claims process.
- You can verify a licensed public adjuster by visiting our website at www.insurance.pa.gov. Once on our site, click "Consumers" on the top bar and select "Find Insurance Professional." If you suspect anyone or any entity is operating as a public adjuster without a license, you may report it by calling the Insurance Department's Anti-Fraud Compliance Division at 717-705-4199.
- Be sure you are working with a reputable, dependable contractor. They should be appropriately registered and insured. Home-improvement contractors that do more than \$5,000 of business per year in Pennsylvania must register with the Attorney General's Bureau of Consumer Protection. Ask the contractor for his Home Improvement Contractor (HIC) number and verify registration by calling the Attorney General's Home Improvement Registration toll-free line at 1-888-520-6680.
- Investigate any firm you are thinking of hiring and get more than one estimate for your repairs. Check references and registration and get everything in writing. This includes the total cost for repairs, the work to be completed, the timetable for completion and guarantees the contractor offers.
- Remember, many municipalities require that skilled tradesmen, like electricians and plumbers, be licensed in addition to being registered.
- Don't sign paperwork with sections left blank. Someone can fill in information after you sign the paperwork.
- Don't pay a contractor in full or sign that the work is complete until the work is actually completed.
- Be cautious of contractors with work vans/trucks that have out-of-state license plates and/or lack signs or insignias identifying the company name.



Assignment of Benefits basics

- ▶ An assignment of benefits (AOB) transfers the property rights of one party to another. In the event of a claim, an AOB occurs when a policyholder assigns their claim benefits to a contractor, which allows them to bill the insurance company directly. In practicality this assigns more than just the policyholder's benefits, they are assigned the policyholder's rights under the policy
- ▶ Contractors can use AOBs to circumvent insurance laws by negotiating and adjusting a claim with the insurance company, but without the necessary license to do so.
- ▶ If an insurance company refuses to pay the contractor what they are claiming to be owed, the contractor can sue the insurance company under the policy since they have been assigned the policyholder's rights.



AOB issue - Florida

- ▶ In 2006, there were 405 AOB lawsuits in Florida
- ▶ In 2016, there were 28,200 AOB lawsuits in Florida
- ▶ House Bill 7015
 - ▶ Passed Florida House 82-20, January 2018
 - ▶ Died in committee in Florida Senate, March 2018



AOB Case Law

- ▶ Rooftop Restoration Inc. v. American Family Mutual Insurance Co.
 - ▶ Supreme Court of Colorado
- ▶ Owners Insurance v. Dakota Station
 - ▶ Supreme Court of Colorado



Questions?

President:

Gregory P. Raab

126 Business Park Drive

Utica, New York 13502

315-797-3035

graab@adjustersinternational.com

General Counsel:

Brian S. Goodman, Esquire

Kramon & Graham, P.A.

One South Street, Suite 2600

Baltimore, Maryland 21202

410-319-0529

bgoodman@kg-law.com

NAIC Liaison:

Ann M. Frohman, Esquire

Frohman Law Office LLC

233 South 13th Street, Suite 1200A

Lincoln, Nebraska 68508

402-438-6612

ann@frohmanlaw.com

