



**Coalition Against
Insurance Fraud**

November 22, 2023

VIA REGULAR MAIL

Blake A. Hawthorne, Clerk of the Court
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711

RE: *Texas Department of Insurance v. Stonewater Roofing, Ltd. Co.*
No. 22-0427
Letter Amicus on behalf of NAPIA

Dear Mr. Hawthorne:

Please accept this letter from the National Association of Public Insurance Adjusters (“NAPIA”) and the Coalition Against Insurance Fraud (“Coalition”) who write now to provide clarity with respect to some of the questions that arose during the October 26, 2023, oral argument in the above-captioned case.¹

As background, NAPIA is a nationwide trade association founded in 1951 to promote ethics and professionalism in the field of public insurance adjusting. NAPIA provides professional education, certification, scholarship, research, and legal and legislative representation, and also markets and promotes the public insurance adjusting profession. Members of NAPIA pay annual fees to further these goals.

As NAPIA is further supportive of consumer protection, NAPIA is a member of the Coalition, an organization formed in 1993 to fight all forms of insurance fraud. The Coalition, whose more than 300 members include insurers, public interest, consumer groups, government entities,

¹ NAPIA and the Coalition also adopt also adopt the amicus briefs submitted by the Texas Association of Public Insurance Adjusters (“TAPIA”) and the insurance trade groups American Property Casualty Insurance Association (“APCIA”), National Association of Mutual Insurance Companies (“NAMIC”), and Insurance Council of Texas (“ICT”).

— associations, and associate business partners, is the nation’s only alliance made up of diverse groups to protect consumers.

Consumers are entitled to representation. Public adjuster representation requires both a high and broad level of expertise, often with backgrounds in law, accounting, insurance, business, and construction. Licensed public adjusters, including NAPIA members, hold a unique combination of these skills and their knowledge on insurance laws, coverage, accounting, construction and materials is not only the key to effective representation of homeowners but can make the difference in whether a business is able to collect revenue and continue operations as a going concern.

Because property losses prove to be a difficult time in the lives of claimants, regardless of the setting, NAPIA and the Coalition are especially concerned with efforts by those who perform or attempt to perform public adjusting without either a license or the knowledge and skill to do so.

Accordingly, for over 60 years, NAPIA has worked with the insurance industry, state insurance departments, and state lawmakers, governors, and attorneys general to ensure that public insurance adjusters practice their trade in an ethical and accountable manner. As a result of these efforts, public insurance adjusters are the only professionals licensed and authorized to prepare insurance claims on behalf of an insured—and their efforts are carefully monitored and regulated by state authorities.

During the oral argument, there was a lot of discussion about the claims process and various statutory requirements. NAPIA and the Coalition wish to make a few points to offer clarity:

- Any individual acting to adjust a claim, either on behalf of an insured or on behalf of an insurer, is required by statute to be licensed. *See* Tex. Ins. Code §§ 4101 and 4102.
- This is consistent with 46 of the 50 states, which all have comprehensive licensing statutes for public insurance adjusters.
- Public adjusters are required to have a contract with the insured they are representing— no one can engage in public adjusting, even public adjusters, without a contract with the insured. *See* Tex. Ins. Code § 4102.103.
- A public insurance adjuster is hired by the insured and will typically receive payment in the form of an hourly fee, a flat rate, or a percentage of the claim settlement. In Texas, a public insurance adjuster’s total compensation may not exceed 10 percent of the claim settlement that the public adjuster secures. *See* Tex. Ins. Code § 4102.104.
- Public adjusters act in a representative capacity with respect to the insured. *See* Tex. Ins. Code § 4102.001(3). They offer the ability to settle the entire claim presented and are specifically licensed to do so. They must undergo rigorous training, pass a licensing exam, and have required continuing education credits to maintain their license. Other than lawyers, they are the only licensed professionals who can serve in a representative capacity on behalf of an insured in a first party insurance claim.

- Roofers and contractors may have “subject matter” knowledge (roofing or other repairs), but they are not trained in the skills required to properly prepare and negotiate the settlement of an entire insurance claim, which may involve other types of damage or extensions of coverage adjusters are trained to identify. Roofers and contractors are mainly focused on their “trade” so the best interests of the insured can be overlooked to serve the contractors’ immediate financial needs to the detriment of the insured’s first-party insurance claim. For example, a roofing contractor’s interest is to secure payment for replacing the insured’s roof and to do so as quickly as possible. However, the insured’s entire claim often includes damage to other property (fence, air conditioning units, garage door, etc.) that the roofer has no ability to repair and that, if pressed, can substantially delay the claims process. The roofer’s motivation is to focus on the portion of the claim pertaining to the roof and not give appropriate attention to the full scope of the claim. Moreover, the roofer’s impulse to be paid for repairing the roof as quickly as possible can lead to compromising on the scope of the roof claim to the property owner’s detriment. In other words, there is always a conflict of interest when a contractor is serving the dual role of contractor and amateur public adjuster. For this reason, Texas, like many states, does not allow “assignment of benefits” due to the inherent conflicts of interest. This is a salient reason to regulate and license public adjusters, whose only job is to prepare and negotiate the entire ‘claim,’ and to keep unlicensed individuals out of a process for which they have no training and a clear conflict of interest.
- Public adjusters have a fiduciary duty to insureds. *See* Tex. Ins. Code § 4102.111. Public adjusters serve as agents of the property owners and are charged with always using their specialized knowledge to serve the best interests of the property owners in the first party claims process. Because public adjusters are not serving a dual role, their sole focus is making sure the full scope of the property owner’s insurance claim is recovered. They are not distracted by the urgent need to be paid for repairing a discrete portion of the property. And because public adjusters are fiduciaries, they face fearsome accountability (both administratively and through the judicial system) if they fail to fulfil their fiduciary duties.
- Public adjusters are subject to financial responsibility laws and standards set by the Commissioner, including the posting of a \$10,000 surety bond. *See* Tex. Ins. Code § 4102.105; 28 Tex. Admin. Code §19.705
- The First Amendment arguments are misplaced. The Texas statute, like the statutes in 46 of the 50 states, does not regulate speech. It does not in any way prohibit commercial speech, in fact, it protects Texas citizens by assuring that only licensed and qualified professionals can represent them in a first party insurance claim.

NAPIA and its members, who serve as honest and ethical public insurance adjusters, along with the Coalition, have a strong interest in ensuring that the laws of Texas are enforced to prevent roofers and other contractors from acting as public insurance adjusters. Enforcing these statutes not only protects the integrity of the public insurance adjuster profession, but also protects consumers from unscrupulous contractors who purport to act as the homeowner’s advocate and

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champion yet face conflicts of interest that give them every incentive to benefit themselves at the policyholder's expense.

Thank you for your time and consideration on this important matter.

Sincerely,

A handwritten signature in cursive script that reads "C. Jake Posey".

C. Jake Posey