

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 a.m. on February 17, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Beverly Beam, Committee Assistant

Conferees appearing before the committee:

Melissa Calderwood, Principal Analyst, Research Department
Bob Alderson, Attorney, National Association of Public Insurance Adjusters (Attachment 1)
Scott DeLuise, National Association of Public Insurance Adjusters (Attachment 2)
Kelly Comer, General Manager, Femco, Inc. (Attachment 3)
Dennis McKinney, State Treasurer (Attachment 4)

Others attending:

See attached list.

The Chair called the meeting to order and welcomed everyone to the meeting.

Hearing on

SB 105 - Enacting the public adjusters licensing act.

Melissa Calderwood gave an overview of **SB 105**. She stated that **SB 105** would provide for the licensing of public adjusters. She said currently, public adjusters are not allowed in Kansas as their work is considered the unauthorized practice of law. She said the bill would restrict public adjusters to work only first party claims under commercial insurance contracts. The bill would require that the Kansas Insurance Commissioner be responsible for licensing of public adjusters. The bill outlines the process for application for a license to work as a public adjuster. She said in addition, the bill permits the Insurance Commissioner to require a criminal history record check, performed by the Kansas Bureau of Investigation, for the determination of the suitability of an individual applying for a public adjuster license.

Ms. Calderwood said the Kansas Insurance Department indicates that the passage of **SB 105** would have a fiscal effect on its operations. The Department states that one-time costs associated with implementing **SB 105** would be approximately \$10,000. The additional expenditures include information technology updates and development of forms for the new class of license. She noted that ongoing expenditures would be related primarily to criminal history background checks performed by the Kansas Bureau of Investigation. The Kansas Insurance Department would be responsible for paying the KBI for its services, though it is unclear as to whether the applicant is responsible for this cost in addition to the license fee or if the cost is included in the applicant's license fee. She said the Kansas Insurance Department estimates that it would issue between 100 and 150 public adjuster licenses with application fees of \$100 per licensee, for total receipts between \$10,000 and \$15,000. The Kansas Insurance Department states that the bill could be implemented within the Department's current approved staffing level. Finally, Ms. Calderwood noted that the Kansas Bureau of Investigation indicates that it would incur additional workload and expense to process these record checks and to prepare and distribute responses. She said since the KBI's fee structure is set to recover the costs of providing these record check services, the fees would provide the funding necessary for the KBI to support the additional workload.

Bob Alderson, representing the National Association of Public Insurance Adjusters, testified in support of **SB 105**. He stated in summary that a comprehensive licensing bill such as **SB 105**, authorizing public adjusters to perform first party public adjusting services, is warranted in Kansas and would serve the dual goal of preventing the unauthorized practice of law (third-party claims work) and protecting the commercially

CONTINUATION SHEET

Minutes of the Senate Financial Institutions And Insurance Committee at 9:30 a.m. on February 17, 2009, in Room 136-N of the Capitol.

insured by giving them access to trained claims professionals who can present their claims, while making sure that unscrupulous public adjusters do not operate in the State of Kansas. (Attachment 1)

Scott DeLuise, on behalf of the National Association of Public Insurance Adjusters, testified in support of **SB 105**. Mr. DeLuise said most states' Department of Insurance are very careful to ensure that all adjusters are duly licensed, facilitating protecting consumer interests. He said the question that continues to arise regarding Public Adjuster licensing is why bother, since Kansas has not previously had such an Act. The answer is that licensing Public Adjusters would ensure that the Kansas Insurance Department has the authority to approve the credentials, honesty and integrity of the individual licensee who would handle first party commercial claims for consumers in the state. He said without a law, the commercial consumer is subject to the whims of the insurance carriers, and would have no expert assistance in the measurement, preparation and presentation of these highly complex claims. He said he believes passage of **SB 105** is warranted. He said the people of Kansas deserve such protection. (Attachment 2)

Kelly Comer, General Manager, Femco, Inc., testified in support of **SB 105**. Mr. Comer told his story of how he lost his manufacturing company to fire. He said his claim was far more involved than anticipated and about a month into the process of rebuilding, they determined they needed a public adjuster. He said his situation quickly changed for the better and his repairs were underway immediately. He said the Public Adjuster was a life saver. He helped Femco stay in business, pay employees and keep and satisfy his customer base. He said without the Public Adjuster, his company would not have survived. (Attachment 3)

The Chair closed the hearing on **SB 105**.

Action on

SB 163 - Consumer protection, mortgage trigger lead.

Amendments to **SB 163** were presented by Matt Goddard, Heartland Community Bankers. Mr. Goddard said one of the balloons is on Page 4 and is in direct response to Senator Brownlee's suggestions at the hearing and the other one is from Page 2 that clarifies something to make sure we are not interfering with existing business relationships.

Mr. Goddard said in Line 9, Page 2, the words "with" and "the" should be stricken and in Line 10, Page 2, the words "applicant has an outstanding extension of credit" should be stricken. Lines 9 and 10 should read, "whom the applicant has initially applied for credit or whom holds or services an existing extension of credit of the applicant who is the subject of the report is not considered a mortgage trigger lead." On Page 4, Line 30, the words "a written or" should be stricken. It should read (13)(A) making an oral solicitation for products or services. In Line 37 the following should be added, (B) making a written solicitation for products or services based on a mortgage trigger lead unless the solicitation clearly and conspicuously states on the first page of the solicitation that the solicitor is not affiliated with the lender or broker with which the consumer initially applied and that the solicitation is based on personal information about the consumer that was purchased, directly or indirectly, from a consumer reporting agency without the knowledge or permission of the lender or broker with which the consumer initially applied. Clear and conspicuous shall include legible type in contrast by typography, layout or color with other printing on the first page of the correspondence; and (C) if applicable, any solicitor under clause (A) or (B) shall be in compliance with the provisions of the Kansas Mortgage Business Act and any other law or regulation.

Senator Steineger moved approval of the amendments as presented. Senator Brownlee seconded. Motion passed.

Senator Brownlee moved to pass the bill out favorably. Senator Colyer seconded. Motion passed.

Action on

SB 39 - School districts; direct investment moneys.

CONTINUATION SHEET

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The Chair called on Doug Wareham, Kansas Bankers Association, to explain the amendments to this bill.

He said this amendment is supported by the Kansas Bankers Association, Heartland Community Bankers and the Community Bankers Association. Mr. Wareham said State Treasurer McKinney is in favor of **SB 39** and agrees with the amendments. The Pooled Money Investment Board is also in support of this bill.

Dennis McKinney, State Treasurer, testified in favor of **SB 39**. Treasurer McKinney stated he is in agreement with the amendments proposed by the Kansas Bankers Association. He said while he is not opposed to giving school districts expanded investment powers, the additional options provided by expanded powers must be part of a diversified portfolio that maximizes returns while minimizing risk and complying with current statutes. (Attachment 4)

Senator Barnett moved passage of this bill as amended. Senator Kelsey seconded. Motion passed.

Action on

SB 49 - Insurance coverage, mental health, alcoholism drug abuse or other substance use disorder benefits.

The Chair said **SB 49** has to do with mental health parity and complying with the federal law.

Senator Kelsey moved to pass SB 49 out favorably and put it on the consent calendar. Senator Barnett seconded. Motion passed.

The next meeting is scheduled for February 18, 2009.

The meeting was adjourned at 10:30 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 2-17-09

NAME	REPRESENTING
Kari Prasley	Kearney & Associates
Bruce Witt	PHS
Paul Jones	UHG
David Simpson	KS Mental Health Coalition
Tom Deches	CBA
Nikki Jordan	Capital Strategies
Alex Kobayewitz	P. I. A.
Brad Smoot	BCBS
Kelly J. Comer	
Deary Beall	YouthVoice
Tyler Bindrum	Intern
Colin Thomasset	ACMACK
Kelly DiRocco	LGR
Jesus Rangel	KU Journalism Student
Lori Church	KAPCIC
John Meete	KID
Maia March	KCUA
STRAWN MITCHELL	CBAK
Scott Millen	Pooled Money Investment Board
LIZ MILLER	PMIB
Bill Sneed	State Farm
Kathy Olsen	KS Bankers Assn
Doug Warcham	KBA
Matt Goodland	FCBA

**ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.**
ATTORNEYS AT LAW

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ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
MICHELLE L. MILLER

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OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON

*LL.M., TAXATION
**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON
ON BEHALF OF THE
NATIONAL ASSOCIATION OF PUBLIC
INSURANCE ADJUSTERS
BEFORE THE SENATE COMMITTEE ON
FINANCIAL INSTITUTIONS AND INSURANCE

February 17, 2009

Senator Teichman and Members of the Committee:

I am Bob Alderson, an attorney in private practice in Topeka, and I am appearing today on behalf of the National Association of Public Insurance Adjusters (NAPIA) in support of Senate Bill No. 105, which would enact the Public Adjusters Licensing Act. Appearing with me today is Scott deLuise, a member of NAPIA, who will explain the requisites of public insurance adjusting and identify the situations that typically give rise to an insured's use of a public insurance adjuster to resolve a claim. Also appearing this morning will be Kelly Comer, who will testify as to his experience engaging the services of a public adjuster. Prior to their testimony, my principal purpose will be to discuss the circumstances giving rise to the introduction of SB 105 and to discuss the bill itself.

Currently, 43 states, plus the District of Columbia, license public insurance adjusters. Thus, the vast majority of states license public insurance adjusters. Each state that borders Kansas (Colorado, Nebraska, Missouri and Oklahoma) has a comprehensive licensing bill regulating public insurance adjusters. Of the seven states that do not have such licensing laws (Alabama, Alaska, Arkansas, Kansas, South Dakota, Virginia and Wisconsin), five of those states allow the lawful practice of public insurance adjusting. Arkansas and, as will be explained subsequently, Kansas are the only states which do not allow the lawful practice of public insurance adjusting.

In 2001 a bill similar to SB 105 was introduced at the request of NAPIA at the time when Senator (now Commissioner of Insurance) Sandy Praeger chaired this Committee. The hearing on the bill was held during the session, but it was not acted on and was held for

*FI&I Committee
2-17-09
Attachment 1*

interim study. Following the interim study, the Special Committee on Commercial and Financial Institutions/Insurance concluded that a licensing law for public adjusters was not needed. That conclusion was prompted by a letter from Attorney General Stovall's office advising that, as long as public adjusters did not engage in the unauthorized practice of law, public adjusters could engage in business in Kansas without being licensed.

Accordingly, for several years thereafter, public adjusters licensed in other jurisdictions, including each of the states surrounding Kansas, engaged in business as public adjusters in Kansas. Recently, however, the Consumer Affairs Division of the Kansas Insurance Department (Department) became concerned that public adjusters were doing business in Kansas without specific authority to do so. Several "alerts" were sent to consumers advising that public adjusters were not licensed in Kansas.

Thus, last summer and fall, representatives of NAPIA and I met with Commissioner Praeger, Assistant Commissioner Bob Tomlinson and Leroy Brungardt, the Department's Director of Licensing, regarding the need to license public adjusters. To that end, I submitted to the Department, a draft of a licensing bill patterned after legislation enacted in a number of other states. Mr. Brungardt thoroughly reviewed the draft and made a number of suggestions to make the draft consistent with the agents' licensing law and other statutes administered by the Department. All of Mr. Brungardt's suggestions were incorporated in the draft, and the "customized" bill was introduced by this Committee as SB 105.

Before referencing some of the pertinent provisions of SB 105, I think it would be helpful to note there are essentially two types of insurance claims adjusters: Company adjusters and public adjusters. As the name implies, company adjusters provide their services to insurers, and they may either be employees of insurance companies or independent contractors. Regardless, they adjust claims on behalf of insurance companies.

Public adjusters, on the other hand, represent insureds in formulating and presenting their insurance claims. Licensing laws in other states universally limit public adjusters to processing first party claims, i.e., claims presented by an insured to the insured's insurance carrier. Processing third-party claims (claims made against a third party or the third party's insurance carrier) by public adjusters is universally prohibited as constituting the unauthorized practice of law. Those are the limitations embodied in SB 105, which further limits a public adjuster to handling claims for loss and damage covered by commercial lines insurance contracts.

I believe the provisions of SB 105 are rather straightforward, so I will not burden this testimony by a detailed explanation. In addition to defining public adjuster, consistent with the foregoing limitations, suffice it to state that:

- The Commissioner of Insurance is given the authority to license public adjusters upon application and examination, with public adjusters licensed in other states being exempt from the examination requirement;

- Persons not licensed as public adjusters are prohibited from representing themselves as public insurance adjusters;
- The bill contains a list of prohibited activities by public adjusters, with penalties prescribed for violations;
- To that end, the Commissioner of Insurance also is empowered to refuse to issue, refuse to renew, suspend or revoke a public adjuster's license; and
- Continuing education requirements are imposed on public adjusters consistent with the requirements imposed on insurance agents.

We believe that a comprehensive licensing bill such as SB 105, authorizing public adjusters to perform first party public adjusting services, is warranted in Kansas and would serve the dual goal of preventing the unauthorized practice of law (third-party claims work) and protecting the commercially insured, by giving them access to trained claims professionals who can present their claims, while making sure that unscrupulous public adjusters do not operate in the State of Kansas.

I noted previously that public adjusters licensed in other states have been present in Kansas for many years. As a tribute to the assistance they have provided to Kansas businesses, I have attached copies of letters written by these businesses to the various public adjusters who have helped them.

Thank you for the opportunity to appear before the Committee. I will be happy to respond to questions from members of the Committee at the appropriate time.

Matrix Business Consulting
Mr. Scott deLuise
2000 Little Raven Street, Suite 6B
Denver, CO 80202

Dear Scott:

I commend you and your staff on the results of our recent fire loss claim. As you know, before we retained your firm, we felt we had already reached an acceptable remedy to our loss from our carrier. It just goes to show that when dealing with areas in which you have little or no experience, you should use a "Professional" to attain the desired results.

You and your team enlightened us about our rights under our policy and far exceeded our expectations on the amount of loss to which we were entitled. You exhibited tenacity in dealing with a very large insurance company but did so in a professional manner with facts to back up your claims.

I strongly urge anyone suffering a fire loss to talk to you before they do anything else. Your firm earned every penny you received in representing us.

Sincerely,



Rick K. Young, GM



Department of Finance

R. Scott deLuise, CCIM, SPPA
Matrix Business Consulting, Inc.
2000 Little Raven St., Suite 6B
Denver, CO 80202

RE: Claims Consulting Services for the City of Wichita

Dear Scott:

On behalf of the City of Wichita, I want to personally thank you for the superb work you and your staff performed on our behalf.

When we originally met with you to discuss the value of Matrix Business Consulting's services, it became apparent that, at least, you would remove the burden of the extra time required to construct the claim in a manner favorable to the City. You accomplished *far* more than that!

Matrix was able to utilize the policy for the greatest benefit of the City by finding and collecting over \$1,000,000 more just on City vehicles, when the insurer told us there was no coverage.

Your accurate measure of damages and superior negotiating skills placed us in the position of recovering much more than would have been possible without Matrix Business Consulting and without undue burden on City staff.

Please have anyone who suffers a catastrophic loss contact me for a reference to Matrix. I'll be more than happy to detail the help and ultimate value that you brought to the City of Wichita.

Sincerely,

Michael S. Payne, ARM
Risk Manager

Risk Management

City Hall • 12th Floor • 455 North Main • Wichita, Kansas 67202

T 316.268.4607 F 316.268.4656



**FULL SERVICE
SUPERMARKETS
THROUGHOUT
THE MIDWEST**

Bill Koehler
Adjusters International
1044 Osage Avenue
Kansas City, Kansas 66105

Re: Tornado damage
Country Mart, Parsons Kansas

Bill:

The time has finally come when we have finalized our claim for the tornado damage. Therefore it's time for me to thank you for your sterling leadership in concluding this claim.

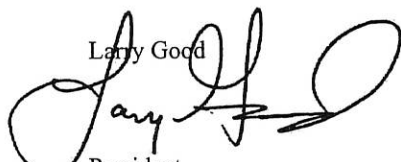
As you know we originally believed that we could handle the insurance company ourselves – oh how wrong we were! The insurance company only wanted to pay us for what we did as repairs not for what we had. Your insistence that the insurance company owed us for exactly what we had, nothing more, but surely nothing less – finally was resolved in our favor.

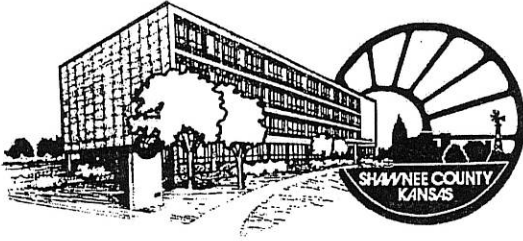
Early on we came to an impasse with the insurance company over the roofing materials. We had a standing seam metal roof with a life expectancy (with minimal maintenance) of 50 years or more. We were told delivery of that roof was twelve weeks. An EPDM roof was available in a matter of days. All things considered, we of course, chose the EPDM roof. There was a difference in value between the two roofs of \$400,000 – the EPDM being the least expensive and having a shorter life. The insurance company insisted they only owed us for what we did/spent. That was when we hired you!!

You led the insurance company kicking and screaming and dragging their heels to the negotiation table. You convinced them that they owed the ACV (actual cash value) of the standing seam roof and then you convinced them that they owed for 38,000 sq. ft. of new vinyl composition floor and the resultant business interruption of 40 days. The floor and business interruption was something we hadn't even considered. You then convinced them that they were negligent for not considering the potential mold contamination.

The insurance company finally, reluctantly, decided they had "met their match" and agreed to pay. As their file manager said "I've got my (backside) in a bind, the Adjuster grossly underestimated the damage, the policy conditions, and his counter-part!! Please help me out of this mess."

Bill you fee was well earned!! We've learned our lesson; it is unthinkable – but should we ever have another loss of any kind the first call we will make is to you. What else can I say – but Thank You.

Larry Good

President



Shawnee County
Office of County Counselor

SANDRA L. JACQUOT
County Counselor

Shawnee County Courthouse
200 SE 7th St., Ste. 100
Topeka, Kansas 66603-3932
(785) 233-8200 Ext. 4042
Fax (785) 291-4902

April 14, 1999

Mr. Bill Koehler
Adjusters International
1044 Osage Avenue
Kansas City, Kansas 66105

RE: Fire Insurance Settlement – Shawnee County Youth Center

Dear Mr. Koehler:

This is to thank you and Pat Bickford for your skillful and effective negotiation in reaching the final settlement of the fire insurance claim resulting from an arson fire at the former Shawnee County Youth Center here in Topeka.

After initial attempts at doing the negotiating ourselves, we discovered that we lacked the resources and knowledge to accomplish the generous settlement you accomplished. We realized early on that we were ill equipped to devote knowledgeable staff to attend the numerous meetings, scope negotiations, unit cost negotiations, addressing building code issues and many other details that needed to be addressed in order to achieve a satisfactory settlement. We are glad we allowed professionals like you and Pat to handle these matters.

Commissioner Marice Kane and I appreciated being present at the final settlement meeting and negotiations so the County's immediate concerns and interests could be addressed before the end of the day. It was a pleasant surprise to everyone that we came back with a final settlement amount and a check to be delivered the following day.

As for the final settlement of our fire loss, the amount was well within our expectations and certainly exceeded our early assessment of loss by about 100%.

Thank you for your hard work and decisiveness. We would recommend your services to any governmental entity in a similar situation.

Very truly yours,

A handwritten signature in black ink that reads "Susana L. Valdovinos". The signature is written in a cursive, flowing style.

Susana L. Valdovinos
Assistant County Counselor

SLV/jl

cc: Board of County Commissioners
Ms. Sandra L. Jacquot, Shawnee County Counselor
Ms. Harriet Harding, Shawnee County Financial Administrator
Mr. Earl Hindman, Director, Department of Corrections



Willmar E. Koehler, Jr.
ADJUSTERS INTERNATIONAL
1044 Osage Avenue
Kansas City, Kansas 66105

Re: Flood Damage – Water Treatment Plant #1

Dear Bill:

I want to take this opportunity to again thank you and your team of Ed Koehler and Pat Bickford for assistance in preparing our insurance claim for the 1993 flood damage and for guidance in handling the settlement negotiations.

Based on the claim presentation, we were able to recover from the insurance company and from FEMA sufficient funds to complete our financing package for construction of a new facility at another location that is not flood prone.

Had you been handling and guiding the preparation and presentation of all our damage estimates from the beginning, our recovery could have been far greater. I speak from experience when I say that estimates given “off the cuff” and without consideration of all the insurance policy’s provisions can come back to haunt you.

I wholeheartedly recommend you and your team to anyone who has suffered a major loss.

Sincerely,

Lanny L. Uden, P.E.
Director of Civil Engineering



**ATCHISON
CASTING**

May 9, 1996

**Mr. Allen C. Gross
Adjusters International
25800 Northwestern Highway
Suite 885
Southfield, MI 48075**

RE: 1993 Flood Claim

Dear Allen:

Your adjustment of Atchison Casting's \$50,000,000 claim with Liberty Mutual was accomplished with perseverance, capability and professionalism. We could not have done it without you, and your team.

The resulting \$49,700,000 settlement will help ACC to repair the damage and offset losses due to business interruption.

Use me as a reference.

Very sincerely,

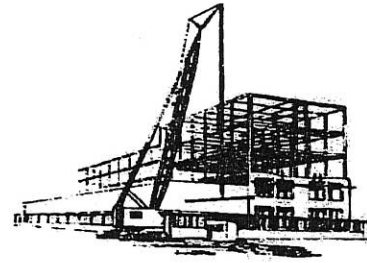
**Hugh H. Aiken
CEO**

DONDLINGER & SONS CONSTRUCTION CO., INC.

General Contractors

TOM DONDLINGER
NICK DONDLINGER
PAUL DONDLINGER
MARTIN DONDLINGER JR.

FOUNDED IN 1925 BY N. L. DONDLINGER



P.O. BOX 398 WICHITA, KANSAS 67201
PHONE (316) 945-0555
FACSIMILE (316) 945-9009

May 10, 1993

Attn: Scott DeLuise
Adjusters International
25058 Genesee Trail Road, Suite 200
Golden, CO 80401

Dear Scott:

I want to take the opportunity to thank Adjusters International especially yourself in the professional manner in which you handled our insurance claim at Old Cowntown Museum.

As you are aware, Old Cowntown Museum is comprised over 50 historic structures of the 1880 era. Churches, barns, schools, gr elevators, etc. were severely damaged by high winds and hail during the June 19th storm. Had it not been for your firm, it would have been very difficult if not impossible to have ascertained in logical, orderly manner the extent of the damage and then make sure nothing was missed. Your firm made it much easier to get losses settled and in a timely manner.

Again, it was great working with you and hope that a disaster this nature does not occur again, but if it does, I would hope to Adjusters International is involved.

Sincerely,

DONDLINGER & SONS CONSTRUCTION CO., INC.

Nick Donlinger

Nick Donlinger
Vice President

ND:SK

RECEIVED

VAN WINKLE CHIROPRACTIC

2434 N. WOODLAWN SUITE 170
WICHITA, KANSAS 67220

John Marini
c/o Adjusters International
P.O. Box 90
Utica, N.Y. 13503-0090

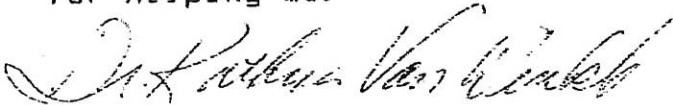
December 13, 1993

Dear John,

Working with Scott Deluise was a very informative experience. I am confident I would not have received the full benefits of my insurance policy without Adjusters International (They even read the small print, no one else does).

I would not hesitate to call Adjusters International if I was ever in a similar situation.

I highly recommend Adjuster International and thank you for helping me.



Dr. Kathryn Van Winkle

HEART MINISTRIES, INC. - VICTORY VILLAGE - VICTORY CHRISTIAN SCHC
EAST AVENUE G AND VICTORY ROAD - P. O. BOX 2068
HUTCHINSON, KS 67504-2068
PHONE 316-463-6112

.....

April 26, 1991

Mr. Bill Ibur, President
Adjuster's International
25958 Genesee Trail Road
Golden, CO 80401

Dear Bill,

Enclosed is the check for \$8,000 which I promised to have in the mail tonight. As I understand, we now owe you \$10,400 more. We will send that to you when the rest of the funds arrive from Cigna.

This is short because my daughter is waiting to take it to the post office, but I do want to convey our thanks to you and to your workers for a job well done. It is human nature to wish that the settlement might be more, but when we consider what it could have been with Lou Davis doing all of the work, we are extremely grateful. It was providential that we were led to contact you for help. You did a very fine job and we will do all we can to spread the word to other people like us who also stand in need.

Even as I write this letter, the TV is still reporting on the tornado that cut a path through South Wichita this evening and then to the northeast through towns like Andover. I know there will be a lot of folks needing your services there. We will do what we can to direct them your way.

Thank you again and we will be expressing that to you every opportunity we have. You have been a great help and blessing to the Lord's work through Heart Ministries, Inc.

Yours for Changed Lives,



Bill Cowell, President
Heart Ministries, Inc.

2000 little raven street, suite 6b
denver, co 80202

P 303.298.1711
F303.298.9108

www.matrixbusinessconsulting.com

TESTIMONY OF R. SCOTT DELUISE
ON BEHALF OF THE
NATIONAL ASSOCIATION OF PUBLIC
INSURANCE ADJUSTERS
BEFORE THE SENATE COMMITTEE ON
FINANCIAL INSTITUTIONS AND INSURANCE

February 17, 2009

Senator Teichman and members of this Committee:

On behalf of the National Association of Insurance Adjusters, I appreciate the opportunity to appear in front of this Committee in support of Senate Bill 105, the enabling legislation for the Public Insurance Adjusters Licensing Act.

As a practicing Public Adjuster, I have been licensed in my home state of Colorado since 1990 when that state first authorized licensing, and before that, practiced since 1985. I am currently licensed in 35 states, mostly west of the Mississippi. Our company handles primarily commercial, industrial and manufacturing losses.

As Mr. Alderson has so ably described the activities of adjusters, both Public and Company, I won't spend more time with this other than to explain that, most states' Departments of Insurance are very careful to ensure that *all* adjusters are duly licensed, facilitating protection of interests of the consumer. The simple reason is that precious dollars are at stake after a claim. KDI has performed a great service to the people of Kansas in this regard, having recovered over \$13.6 million for consumers in 2008 alone.

The salient question that continues to arise regarding Public Adjuster licensing is: why bother, since Kansas has not previously had such an Act? The simple answer is that licensing Public Adjusters would ensure that KDI has the authority to approve the credentials, honesty and integrity of the individual licensee who would handle first party commercial claims for consumers in this state. Absent such a law, the commercial consumer is subject to the whims of the insurance carriers, and would have no expert assistance in the measurement, preparation and presentation of these highly complex claims.

As a member of the National Association of Public Insurance Adjusters, previous Member of the Board of Directors and Ethics Committee and member of the Professional Education Committee, I can assure you that we at NAPIA are committed to the ethical

FI&I Insurance
2-17-09
Attachment 2

practice of Public Adjusting, and work very hard to ensure that our members adhere to our Professional Conduct and Ethics as provided to you as part of this testimony. Historically, we have assisted various states' Departments of Insurance in writing Public Adjusters licensing examinations and opining to counsel as to whether the actions of individuals were customary and usual in the practice of Public Adjusting. We have no interest in pursuing third party claims; as we, like the Kansas Bar, believe these claims, when handled by anyone other than attorneys, constitute the unauthorized practice of law. Finally, we are routinely retained as experts by plaintiff's counsel in determining damages relating to insurance matters.

I also believe that passage of SB 105 is warranted. Its time has come, and the people of the State of Kansas deserve this protection.

Thank you very much. Please feel free to ask any questions of me at the appropriate time.

Rules of Professional Conduct and Ethics

The following Rules of Professional Conduct and Ethics are applicable to all members of the Association:

1. The members shall conduct themselves in a spirit of fairness and justice to their clients, the Insurance Companies, and the public.
2. Members shall refrain from improper solicitation.
3. No misrepresentation of any kind shall be made to an assured or to the Insurance Companies.
4. Commission rates shall be fair and equitable, and strictly in accordance with the prevailing custom in the locality, and must, where laws or regulations of insurance departments exist, comply fully with such laws or regulations.
5. Members shall conduct themselves so as to command respect and confidence. They shall work in harmony with one another, with their clients, and the Insurance Companies' representatives, so as to foster a cordial and harmonious relationship with all branches of the insurance business, and with the general public.
6. Members must be fitted, by knowledge and experience, for the work they undertake. They must not endanger the interests of the public adjusting profession, or risk injustice to assureds or to the Insurance Companies, by attempting to handle losses or claims for which they are not qualified, and for which they cannot find competent technical assistance.
7. Members shall not engage in the unauthorized practice of law.
8. Members shall not acquire any interest in salvaged property or participate in any way, directly or indirectly, in the reconstruction, repair or restoration of damaged property, except with the knowledge, consent and permission of the assured.
9. Members shall be cooperative and assist one another in every possible way.
10. Members shall not disseminate or use any form of agreement, advertising, or any printed matter that is harmful to the profession of public adjusting, or which does not comply with the rules and regulations of the Insurance Department of the state in which such member is professionally engaged, or which might subject public adjusting and public adjusters to criticism or disrespect.

Senator Teichman and Members of the Committee:

My name is Kelly Comer. I am General Manager of Femco, Inc. located in McPherson, Kansas. We manufacture ROPS, Weather Protection, and custom manufacturing for the Ag and Turf Industries. We employ 60 people and have been in business since 1965. In August 1999, Femco, Inc. suffered a devastating fire in the painting section of our manufacturing facility.

The fire spread toxic smoke through the whole facility, as well as, destroyed the paint booth in the center portion of the facility. The destruction was about 40% of our total square footage. The entire center section was determined to be unusable. Our manufacturing process was shut down for over 45 days.

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Attachment 3*

Our insurance company adjuster arrived and advised us that it was our responsibility to present the claim. We were told to prepare a statement that represents the dollar amount to repair the damage to the building, to replace the paint line, to clean the plant, to clean the WIP, and to clean the current inventory. After receiving the statement, they will decide what the total compensation should be. She was polite and professional, but we received no guidance.

We were confident that our insurance was adequate as our insurance company was reputable. When we perused our coverage, we agreed the dollar amount on each of the building, the equipment, the inventory, and limited business income would suffice.

We hired a restoration contractor to clean the inside of the building and all our manufacturing equipment. We contacted a contractor who erected steel buildings for a quote and construction schedule. We also contacted a company who could advise us on the latest technology for painting manufactured parts and whole goods.

About one month into this process, we determined this was not going our way. We were in way over our heads as far as restoration and the construction process was concerned.

Our manufacturing process was suffering and even though our customers understood, they needed the product. The complexity of the claim was way more complicated than anticipated. We needed help fast! We were introduced to the Public Adjuster concept and we immediately retained one. It was amazing how quickly the situation changed for

the good. They quarterbacked the effort and all of a sudden the right people were showing up to get our plant put back together. They surveyed and reviewed things that we would have never thought of. While they did this, the Femco team concentrated on the manufacturing process to satisfy our customer's needs. The presentation to the insurance company was professional and detailed to the point that the insurance company was in agreeance. By the time the claim was submitted, we had received advanced payments to cash flow us. Repairs were underway immediately.

The Public Adjuster was a life saver. They helped Femco, Inc. stay in business, pay employees, and keep and satisfy our customer base. Without the Public Adjuster, Femco, Inc. would not have been able to survive the tragedy.



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Senate Committee on Financial Institutions
Senate Bill 39
February 17, 2009

I am in favor of S.B. 39, and I agree that the amendments proposed by the Kansas Bankers Association strengthen the bill. We should have three objectives when it comes to investing public funds:

1. Protect the safety of the public funds, especially idle funds. A large part of idle funds are not open to long term investment as they will be needed for expenditure within 30 days and even more within 90 days. Therefore, it is imperative that the monies be safe and available when needed.
2. Utilize a system that engages competition for idle monies to secure the best possible interest earnings for the benefit of taxpayer.
3. In a manner consistent with goals one and two, invest idle funds in a way that allows the funds to remain within the Kansas economy, preferably in ways that allow the funds to provide liquidity for loans within the Kansas economy.

My concern is growing that more and more public funds in Kansas are moving into non-bank investments such as federal agency securities which in some cases may have more risk than a bank deposit and a slightly higher return on the investment, but they take the public funds completely out of the Kansas economy. In his January 2006 study, John D. Wong, Ph. D. with Wichita State University cautioned that the increased return that may be received from investing funds out of state must be balanced against the benefit to the Kansas economy, and ultimately the state's tax revenue, when Kansas banks use the capital provided by deposits of public funds to make loans to Kansas businesses.

While I am not opposed to giving school districts expanded investment powers, the additional options provided by expanded powers must be part of a diversified portfolio that maximizes returns while also minimizing risk and complying with current statutes requiring municipalities to first offer their idle funds to local banks.

*FI&I Committee
2-17-09
Attachment #*