

BEFORE THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES

In Re: Petition for Declaratory Statement
on behalf of the Windstorm Insurance Network et al. Case No. 306976-23-DS

CITIZENS' MOTION TO INTERVENE

Pursuant to section 120.565, Florida Statutes, and Rule 28-105.0027, Florida Administrative Code, Citizens Property Insurance Corporation (“Citizens”) hereby moves to intervene in relation to the Petition for Declaratory Statement (the “Petition”) filed by Petitioners, the Windstorm Insurance Network, the Insurance Appraisal and Umpire Association, Inc., and the Property Loss Appraisal Network (collectively, the “Petitioners”), that was published in the Florida Administrative Register on February 28, 2023.

Citizens respectfully requests that the Department of Financial Services (the “Department”) answer the central question posed in the Petition (i.e., whether an appraiser in a property insurance dispute must hold a valid Florida license as an adjuster) in the affirmative. In support of its intervention and that position, Citizens would offer the following:

Citizens is a state entity that was created in 2002 by section 627.351, Florida Statutes. The purpose of Citizens is to “provide insurance for residential and

commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.” § 627.351(6)(a)1., Fla. Stat.

Citizens is by far the largest home insurer in Florida, with more than 1.2 million policies in place, and its policy count is only expected to grow further in the short-term. Citizens has a special interest in the outcome of this proceeding and an adverse outcome could have a special impact upon Citizens for the following reasons.

1. This proceeding requests the issuance of a declaratory statement regarding the training and certification of unlicensed individuals as appraisers in property insurance disputes. In particular, Petitioners have alleged that they currently offer such training and certification programs in Florida to unlicensed individuals but are now in doubt whether their conduct complies with or instead facilitates violations of sections 626.854 and 626.855, Florida Statutes, as well as Florida’s Insurance Code. In any event, the real question posed by the Petition is whether an appraiser in a property insurance dispute must hold a valid Florida license as an adjuster.

2. According to Petitioners, their doubt is based on the Proposed Recommended Order submitted by the Department in Department of Financial Services v. Scott David Thomas, DOAH Case No. 22-0984PL as well as the Recommended Order issued by Administrative Law Judge Robert S. Cohen in the

same matter.¹ Several employees or contractors of Citizens testified in the DOAH proceeding. The DOAH licensure proceeding focused in large part on Mr. Thomas' conduct as both a public adjuster and appraiser representing several different policyholders of Citizens.

3. The issuance of a declaratory statement that appraisers may participate in property insurance disputes in Florida without having a valid adjuster license would have a significant impact upon Citizens. Citizens participated in 4,605 appraisal proceedings in 2022. Citizens has already participated in 3,471 appraisal proceedings in the first few months of 2023, with many of those appraisal proceedings involving claims from hurricanes and other large-scale catastrophes.

4. Even turning to the circumstances of Mr. Thomas, should the Department issue a Final Order in DOAH Case No. 22-0984PL that upholds the recommended 24-month suspension or even increases the penalty to a revocation of his public adjuster license, the issuance of the declaratory statement requested by Petitioners would lead to a perverse and unintended outcome, namely that Mr. Thomas' ability to serve as an appraiser in property insurance disputes would be completely unimpacted by any licensure discipline. This would be the natural consequence of granting the relief requested by Petitioners despite the fact that

¹ Petitioners appear to be confused about the nature of the Recommended Order, incorrectly implying that it somehow sets forth the position of the Department. To the contrary, the Department has yet to issue its Final Order in DOAH Case No. 22-0984PL.

much of the problematic conduct that led to the Administrative Complaint against Mr. Thomas involved his actions in appraisal proceedings, including appraisal proceedings involving policyholders of Citizens.

5. Citizens respectfully submits that sections 626.854 and 626.855, Florida Statutes, as well as Florida's Insurance Code instead require that any appraiser involved in a property insurance dispute in Florida must hold a valid Florida license as an adjuster.² As the Department has already noted in its Proposed Recommended Order in DOAH Case No. 22-0984PL, "[b]ecause the work of an appraiser falls within the statutory definition of 'public adjuster,' an appraiser is subject to the requirements of the Florida Insurance Code. This would include the Adjuster's Code of Ethics. Accordingly, Respondent is subject to discipline for misconduct occurring during Respondent's work as an appraiser." ¶ 202.

6. An adverse result in this proceeding could have a potentially significant impact upon premiums paid by not only insureds covered by Citizens' policies but all insured covered by property insurance in Florida. If Citizens has a projected deficit, it is statutorily required to impose a surcharge on all Citizens policyholders. § 627.351(6)(b), Fla. Stat. If surcharges on Citizens' policyholders

² Duly licensed attorneys who are in good standing with The Florida Bar are exempted from any requirement to be licensed as adjusters pursuant to section 626.860, Florida Statutes, and thus could serve as appraisers in property insurance disputes in Florida without an adjuster license.

are insufficient to cover the annual deficit, additional assessments must be charged against policyholders of *all* Florida property insurance policies. *Id.*

Citizens' circumstances are unique among insurers in Florida. Consequently, Citizens respectfully requests that the Department allow it to intervene in this declaratory statement proceeding.

s/ Russell S. Kent
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was filed with the Department by email to DFSAgencyClerk@MyFloridaCFO.com and served on Petitioners by email to cbaker@pibadjusters.com; gclausen@ccattorneys.com; jwhedbee@masolutions.com; bob@generaladjustingservices.com; and j.robinson@csigroupna.com on this 21st day of March 2023.

s/ Russell S. Kent
Russell S. Kent