

**PETITION FOR DECLARATORY STATEMENT BEFORE THE FLORIDA
DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF INSURANCE AGENT
AND AGENCY SERVICES**

Windstorm Insurance Network, the Insurance Appraisal and Umpire Association, Inc. and the Property Loss Appraisal Network,

Petitioners,

v.

Department of Financial Services,
Division of Insurance Agent and Agency Services,

Respondent.

PETITION FOR DECLARATORY STATEMENT

Pursuant to Fla. Stat. §120.565, the Windstorm Insurance Network (“WIND”), the Insurance Appraisal and Umpire Association, Inc. (“IAUA”) and the Property Loss Appraisal Network (“PLAN”) (collectively referred to as the “Petitioners”) seek a Declaratory Statement from the Florida Department of Financial Services, Division of Insurance Agent and Agency Services (“Division”) as to the applicability of a statutory provision to the Petitioners particular set of circumstances. Specifically, Petitioners are in doubt as to whether their current educational curriculum regarding the certification, education, and training of appraisers without Florida adjuster licenses violates, and facilitates the violation of, Fla. Stat. §626.854(1), Fla. Stat. §626.855 and the Florida Insurance Code.

II. The Petitioners.

Petitioners provide specific and targeted educational training throughout Florida to current and prospective appraisers. The training includes providing appraiser certification and

designations to individuals who are not licensed Florida adjusters under a 6-20, 3-20 or any other applicable Florida adjuster license.

The WIND Certified Appraiser Program® was introduced in 2012 to enhance the professionalism and ethics of property insurance appraisers. Each year, hundreds of property insurance claims professionals complete the four-hour WIND Certified Appraiser® program taught annually at the Windstorm Insurance Conference. Upon completion of the program, professionals further their credentials by successfully meeting the guidelines and criteria to become a WIND Certified Appraiser®. The program, which includes the WIND Certified Appraiser class and the WIND Certified Appraiser Recertification class®, is a valuable educational resource for those wanting to further their understanding of the property insurance appraisal process. WIND educates, certifies and recertifies individuals as appraisers who do not hold a Florida's adjusters license.

The IAUA is an educational association focused solely on appraisal dedicated to providing help and guidance related to property insurance appraisals. The IAUA was founded in 2009 and has been providing training since 2010 for appraisers and umpires both domestically and internationally. The IAUA routinely holds certification courses in Florida and certifies appraisers in Florida. The IAUA educates and certifies individuals as appraisers who do not hold a Florida adjusters license.

PLAN was founded in 2015 and has provided certification programs since 2017. PLAN provides an appraisal certification program course which focuses on providing an understanding of the appraisal by first gaining an understanding of the attendee's experience in appraisals, their understanding of the process and its intended usage in property loss disputes. The PLAN course also focuses on strengthening the morals, ethics, integrity and professionalism of

those who serve as appraisers. The Appraiser Certification Seminar is provided over a 3-day period with a graded and proctored test during the final day. To obtain their Appraiser Certification Attendees must have a passing grade on the test. PLAN educates and certifies individuals as appraisers who do not hold a Florida adjuster's license.

Petitioners have and continue to educate, train and certify individuals as appraisers who do not hold licenses as Florida adjusters.

II. Petitioners' Doubts Concerning the Applicability of Fla. Stat. §626.854(1) and Fla. Stat. §626.855 to their Particular Set of Circumstances.

On December 16, 2022, the Division, in the matter of the *Florida Department of Financial Services, Division of Insurance Agent and Agency Services v. Scott David Thomas* (DOAH Case No. 22-0984PL) submitted its Proposed Written Report and Recommended Order to the State of Florida Division of Administrative Hearings (the "Recommendation"). A copy of the Recommendation is attached as Exhibit A.

In its Recommendation, the Division stated:

Because 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. THE DEPARTMENT IS PERMITTED TO PROSECUTE A LICENSEE FOR CONDUCT OCCURRING OUTSIDE THE SCOPE OF LICENSURE. Exhibit A at ¶202. (emphasis added).

A licensee can be held liable for conduct occurring outside of the scope of licensure can be found in the plain language of section 626.611, Florida Statutes. *Id.* at ¶206.

Section 626.611(1), Florida Statutes, provide grounds for the compulsory suspension or revocation of an agent's license, and provides, in relevant part:

The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, **licensee**, or appointee any one or more of the following applicable grounds exist: (Emphasis added). *Id.* at ¶207.

Section 626.611(1), Florida Statutes, refers to the listed group of individuals subject to its provisions generally as “applicant” and “licensee.” Id. at ¶208.

Because the end of subsection one (1) uses the word “licensee,” the section applies to all licensees regardless of whether they are acting under the scope of their particular licenses. Id. at ¶209.

Sections 626.611(1) (a)-(d), (g)-(j), (m), and (n), Florida Statutes, apply generally as to all licensees. In contrast, subsection 626.611(1)(f), Florida Statutes, applies only to adjusters or agents licensed and appointed to adjust claims, and subsection 626.611(1)(l), Florida Statutes, only applies to general lines agents, life agents, and health agents. Accordingly, any argument that section 626.611(1)(g), Florida Statutes, does not apply to Respondent as a licensee is without merit. Id. at ¶210.

On January 30, 2023, the State of Florida, Division of Administrative Hearings issued its Recommended Order with respect to the conduct of David Scott Thomas (the “Order”). A copy of the Order is attached as Exhibit B. The Department held that:

Regarding Counts VI and X, much was made at hearing as to whether Respondent was acting as a public adjuster or an appraiser with respect to the two claims related to those counts. Regardless of whether Respondent performed some appraisal duties in connection with the claims addressed in Counts VI and X, the testimony elicited at hearing clearly establishes *that Respondent’s specific work on those claims involved conducting an inspection or investigation of the claim and that his work involved effecting a potential settlement or resolution of the claim. His involvement in the two claims fell within the scope of his role as a public adjuster* (emphasis added).

Based on the Recommendation and the Order, the Division suggests appraisers must be licensed adjusters and are therefore subject to the Adjuster’s Code of Ethics and the Florida Insurance Code. Accordingly, Petitioners are in doubt as to whether their training and certification of unlicensed individuals as appraisers is compliant with Fla. Stat. §626.854(1) and §626.855 which state:

626.854(1) A “public adjuster” is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for

money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

626.855. An “independent adjuster” means a person licensed as an all-lines adjuster who is self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage.

Petitioners are further in doubt as to whether their training and certification of unlicensed individuals as appraisers facilitates violations of Fla. Stat. §626.854, Fla. Stat. §626.855 as well as Florida’s Insurance Code.

WHEREFORE, Petitioners request a Declaratory Statement with respect to following:

- A. Whether Petitioners training and certification of unlicensed individuals as appraisers is compliant with Fla. Stat. §626.854(1), Fla. Stat. §626.855 and Florida’s Insurance Code.
- B. Whether Petitioners’ training and certification of unlicensed individuals as appraisers facilitates violations of Fla. Stat. §626.854(1), Fla. Stat. §626.855 and Florida’s Insurance Code.

Dated February 23, 2023

Respectfully Submitted,

Windstorm Insurance Network



Charlie Baker, President

cbaker@pibadjusters.com

Gina Clausen Lozier, Appraisal and Umpire Committee

gclausen@ccattorneys.com

Justin Whedbee, Appraisal and Umpire Committee

JWhedbee@mas-solutions.com

2800 Eisenhower Ave.

Suite 210

Alexandria, VA 22314

1-800-905-9463

Insurance Appraisal and Umpire Association, Inc.

/s/ Robert Norton

Robert Norton

bob@generaladjustingservices.com

20423 SR7

Suite F6-288

Boca Raton, FL 33498

813-757-6450

The Property Loss Appraisal Network (P.L.A.N.)



John C. Robison

P.L.A.N. Founder & Educator

j.robison@csigroupna.com

151 W. Main Street

Suite 103

Canton, GA 30114

1-844-344-7526