



January 6, 2016

**To:** The Honorable Senator Roth (Chair)  
The Honorable Senator Gaines (Vice Chair)  
Members, Senate Insurance Committee

**From:** American Insurance Association  
Association of California Insurance Companies  
National Association of Mutual Insurance Companies  
Pacific Association of Domestic Insurance Companies  
Personal Insurance Federation of California

**Subject: SB 488 (1/4/16 as amended) Insurance Adjuster Reform Act—Neutral With Concerns**

On behalf of all the property casualty insurance trade organizations listed above, we are writing to express our position on SB 488. While we support the general purpose of this bill—to provide more protection for policyholders when dealing with public adjusters (PA)—we continue to have a number of concerns and believe that our suggested amendments could further strengthen the bill to address PA issues or practices that exist, and often at the detriment of policyholders as discussed below.

### **Timely Handling of Claims for Policyholders Must be Resolved**

Currently, PAs are only required to contact insurance companies to inform them that they have a contract with a policyholder. Nothing in law requires PAs to notify insurers about the actual claims (damages) incurred by the policyholder whom they purport to represent—this can lead to claims delay or denial, which is not helpful to policyholders. To illustrate the potential claims delay, consider the following hypothetical:

- Policyholder X's house burns down on December 29.
- A PA contacts policyholder X on January 1 about representing policyholder X before filing a claim on a house that burned down.
- Policyholder X takes a full week to review the PA contract (January 8).
- On January 9, policyholder X signs the contract (under existing rules the contract can be cancelled up to 3 days).
- The PA waits another 3 business days to notify the insurer of the contract on January 12, and notifies insurer that they now represent policyholder X, and therefore all communications goes through them.
- The PA waits 14 days to contact insurers to provide a NOTICE OF CLAIM on January 26, which provides information of the damages.

Nothing in law requires a PA to provide an insurer a notice of claim, so the delay period can run longer than illustrated above.

Insurers have a duty to process a claim in a timely manner. This includes reviewing police reports, interviewing witnesses, and investigating the actual damages. Based on the hypothetical timeline discussed above, after nearly a month, it is conceivable that the memory of whoever wrote the reports can fade, witnesses may be unavailable, and actual damages may not be in the same condition as it they were, thus

creating further challenges in investigating the claim. In sum, the unnecessary delay in reporting a claim is not helpful to a policyholder and thus needs to be addressed in SB 488. We further believe that requiring PAs to provide a notice of claim to insurers is consistent with their duties as an agent of a policyholder. Insurance Code section 15027.5 subdivision (a) plainly states “Any person acting as a public adjuster who has executed a contract as described in Section 15027 is the agent of the insured....”

As proposed below, our amendments takes the policyholder out of the middle, allows for timely processing of claims, and provides that the notification has to be “after the contract is signed” (not before) to address the issue about policyholders allegedly being talked out of their contracts.

- The public adjuster must, within a 24 hour period but no later than close of the next business day after the public adjuster contract is signed, contact the insurer using the insurers’ toll-free claims telephone number or regular claims number if a toll-free option is not available and do the following: (1) provide the insurer with notice of the claim and pertinent information about the policyholder, if the loss has not previously been presented to the insurer; and (2) provide some form of written verification that the public adjuster has a contract with the policyholder.

We also have additional concerns with the recent amendments taken on January 4, 2016

### **Allowing PAs to Handle Third Party Claims in Situations Where No Liability Exists is Unrealistic, Disrupts the Claims Process, and Brings to Question the Practice of Law by PAs.**

Expanding PAs role to allow them to handle third party claims is contrary to the NAIC Model, even with the limitation to claims that do not involve liability disputes. In fact, it is unreasonable to expect PAs or insurers to know if liability is an issue within a 3-5 day period of time. Finding out later, would result in the third party needing to rescind the contract, and start over the claims process. Even the insurance regulations provide insurers 40 days to determine liability (accept or deny a claim). Providing such an expansion of PA’s roles, also blurs the line between claims adjusting and practicing law, as PAs are not qualified to determine liability. Further, if claims are not handled correctly as a result of PAs involvement, insurers could be subject to bad faith suits from their own insureds. For these reasons, we recommend striking this amendment.

### **Policyholders Should Keep Their Right to Rescind**

Insurance Code Section 15027 subdivision a (13) currently provides policyholders the right to rescind the contract they have with public adjusters. As amended, a policyholder’s right to rescind was replaced with right to cancel. This provides a lower level of remedy for policyholders by proposing that they only have the right to cancel a contract with public adjusters. Generally, a rescission rolls everything back to the point before the contract ever existed whereas a cancellation merely eliminates any future obligations under a contract. We recommend that the right to rescind be restored in keeping with the purpose of the bill—consumer protection.

### **Permitting PAs to Satisfy Their Training Requirements in a Shorter Period than Independent Adjusters Does Not Protect Policyholders**

Shortening the time apprentice PAs need for training by half (from two years, to one) and removing the six month waiting period to retake an exam do not protect policyholders and create an issue of fairness. Independent Adjusters are not afforded this opportunity, and are arguably more qualified, as many of them have been trained by insurance companies. We thus recommend that it be removed.

We look forward to working with stakeholders in addressing the issues set forth in our letter. If you have questions or comments, feel free to contact anyone of the following: Armand Feliciano, ACIC Vice President (916-205-2519/ [armand.feliciano@pciaa.net](mailto:armand.feliciano@pciaa.net)), Kara Cross, PIFC General Counsel (916- 442-6646/ [kcross@pifc.org](mailto:kcross@pifc.org)), Shari Mchugh, Partner, (916-769-4872/ [smchugh@mchughgr.com](mailto:smchugh@mchughgr.com)), Christian Rataj, Senior Director (NAMIC/ 303-907-0587/ [crataj@namic.org](mailto:crataj@namic.org)), or Steve Suchil, Assistant Vice President (AIA/ 916-718-9568/ [ssuchil@aiadc.org](mailto:ssuchil@aiadc.org)).

cc: Senator Block, California Department of Insurance, Governor's Office Michael Martinez