



JOHN BALES
ATTORNEYS

DON'T DROP THE BALL ON CONTRACT REQUIREMENTS AND PERFORMANCE

www.JohnBales.com

Bradenton	(941) 758-9100
Bushnell	(352) 793-7365
Citrus County	(352) 341-0555
Clearwater/Tarpon Springs	(727) 461-9100
Dade City	(352) 458-9200
Ft. Myers	(239) 768-9100
Lakeland	(863) 686-9100
Naples	(239) 263-9101
New Port Richey/Port Richey/ Hudson	(727) 843-9100
Sarasota	(941) 951-9100
Spring Hill	(352) 683-9727
St. Petersburg	(727) 823-9100
Tampa	(813) 224-9100
Winter Haven	(863) 325-9100

Through Out Florida
Toll Free

1-800-CALL-JOHN

(1-800-225-5564)

Facsimile

St. Petersburg: (727) 579-9109

Tampa: (813) 224-9109

John Bales Cell Phone
(813) 220-3461

These materials are designed to provide general information regarding insurance coverage matters and are not intended to be legal advice. This is distributed with the understanding that the publisher, the author, and the contributors are not engaged in rendering legal or other professional services to the reader. If legal advice or other professional assistance is required, the services of a competent professional person should be sought.

The publisher, author, and contributors make no representations or warranties with respect to the accuracy or completeness of the contents of this work and specifically disclaim all warranties, including without limitation warranties of fitness for a particular purpose. No warranty may be created by promotional materials. The advice and strategies contained herein may not be suitable for every situation. The publisher, the author, and the contributors shall not be liable for direct, indirect, or consequential damages arising herefrom. The views and conclusions expressed are those solely of the author.

This publication is not to be construed legal advice and any use of this information will not create an attorney-client relationship. Representation of any claim can only commence after engaging in an initial consultation and execution of a written attorney-client agreement.

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
I. INTRODUCTION.....	4
II. PUBLIC INSURANCE ADJUSTER SERVICES AGREEMENT.....	4
A. CONTRACTS – WHAT ARE THEY?	5
B. PUBLIC ADJUSTER CONTRACTS	5
C. THE BENEFITS OF CONTRACT STANDARDIZATION	6
D. HOW TO HANDLE UNCERTAINTIES	6
E. LEGAL REQUIREMENTS FOR PUBLIC ADJUSTER CONTRACTS.....	6
F. NAMING PARTIES	9
G. SERVICES AGREEMENT PROVISION.....	10
1. Services.....	10
2. Notice of Public Insurance Adjuster Services and of Assignment.....	10
3. Cancellation of Agreement.....	11
4. Fees for Services	12
5. Expenses and Costs	13
6. Letters of Protection	13
7. Provisions Concerning Services.....	15
8. Exculpatory Provision.....	22
9. Statement of Claim	23
10. Attachments.....	24
11. Signature and Date Lines	24
H. OTHER PROVISIONS TO CONSIDER	25
1. Arbitration Provision.....	25
2. Nonjury Provision.....	26
3. Attorneys' Fee Provision.....	27

4.	<i>Document Storage Provision</i>	28
5.	<i>Miscellaneous Provisions</i>	29
III.	LETTERS OF PROTECTION	29
IV.	JOHN BALES ATTORNEYS	30
A.	<i>OVERVIEW OF JOHN BALES ATTORNEYS</i>	30
B.	<i>AREAS OF LAW</i>	32
C.	<i>ATTORNEY BIOGRAPHIES</i>	33
A.	<i>ATTORNEY BIOGRAPHIES</i>	33
	APPENDIX	40
A.	<i>APPENDIX A: SERVICE AGREEMENT, REV. 11/2014</i>	40
B.	<i>APPENDIX B: AFFIDAVIT – AUTHORITY TO SIGN FOR UNAVAILABLE CLAIMANTS, REV. 11/2014</i>	44

I. INTRODUCTION

This booklet provides a broad summary of provisions concerning a Public Insurance Adjuster Services Agreement and other documents that may be used by a Public Adjuster. It is not intended to place a Public Adjuster in a position to have a complete understanding of this area of the law. However, it may help create “issue recognition” so that a Public Adjuster will seek appropriate legal advice when necessary. A short synopsis of the statutes and other Florida law are provided as a background.

To aid review, the provisions referenced in this booklet are presented in a Frequently Asked Questions format. Please understand it is a common practice of the legislature and the Florida Department of Financial Services to “tinker” with these statutes and codes. Therefore, a Public Adjuster should not rely on what he or she believes was the correct law yesterday for an event occurring today. Accordingly, a Public Adjuster can not necessarily rely on the forms specified in this booklet.

Remember, an agreement is only necessary when there is a dispute. Having a well written agreement is similar to having a fire extinguisher at your home or business. An agreement that explains each party’s rights may help prevent an issue between the contracting parties from getting out of control. This is similar to having a fire extinguisher, which may help prevent a small kitchen fire from turning into a major fire. Most will agree that a fire extinguisher is necessary, even when the individual has never had a fire before. The same logic applies to an agreement. Most will agree that a well written agreement is necessary, even where you have never been in a dispute before. Of course, you must determine what a well written agreement is for you and ensure that agreement offers the protection you need.

Once again, while this overview may give some insight into Florida law, a Public Adjuster should consult with an attorney for an opinion on applying the facts of any particular matter to the statutes, codes, and case law.

II. PUBLIC INSURANCE ADJUSTER SERVICES AGREEMENT

“Prior preparation prevents poor performance.”

-James Baker

This draft service agreement is an attempt to be concise without sacrificing some of the fundamental requirements for such an agreement. It addresses certain provisions

required by Florida laws regulating Public Adjusters. Of course, a more detailed and lengthy agreement would more adequately address the terms and conditions of the relationship between the parties. On the other hand, some may consider it to be “too long,” and consequently onerous and difficult to read. Provisions may also be deleted to make it shorter. However, it may then have so few “teeth” that it is not serving its purpose. It is a difficult balancing act; however, the decision is the Public Adjuster’s decision to make.

While the best agreement is the simplest, it is important that an agreement comply with Florida law, describe the scope of the services that will be provided, the compensation (fees and costs) that will be incurred for such services, and have the signatures and signature date of all parties to the agreement. At a minimum, a Public Adjuster should be aware of the potential advantages and disadvantages of including or excluding certain provisions.

The following addresses various contractual provisions that can be included in the Agreement. This will give you the opportunity to consider and comment on a variety of provisions and decide which to include. A copy of the service agreement is provided in Appendix A.

A. *Contracts – What Are They?*

1. Agreement
 - a. The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations.
2. Offer and Acceptance
 - a. Offer: To present for acceptance or rejection.
 - b. Acceptance: Two parties agreement to the terms of a contract.
3. Insurance Policies are Contracts of Adhesion
 - a. Contracts of Adhesion are, “a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to *adhere* to the contract of *reject* it.” *Seaboard Finance Co. v. Mutual Bankers Corp.*, 223 So. 2d 778, 782 (Fla. Dist. Ct. App. 1969).
4. Performance –
 - a. The fulfillment or accomplishment of a promise, contract, or other obligations according to its terms.

B. *Public Adjuster Contracts*

1. NOT Contracts of adhesion.
 - a. Public Adjuster Contracts are not Contracts of Adhesion because of the lack of disparity of bargaining strength, and many provide an opportunity to bargain over the terms of the contract.
2. Ruling out misunderstandings – listen to and explain the contract to your policyholder.

3. A public adjuster's fiduciary duty to the policyholder.
 - a. Fiduciary: A person holding the character of a trustee.
 - b. Fiduciary Relationship: The trust between the agent and the principle. Care and responsibility must be taken for the best interest of the principle.
 - c. Fiduciary Duty: Where a fiduciary relationship exists the principle possesses rights. Those, rights create a corresponding duty owed by the fiduciary to the principle.

C. The benefits of contract standardization

1. Contract that has been used and approved over a period of time will more likely be acceptable to DFS or the Courts. For example, the real estate brokers' contract is widely accepted because of its uniformity and longtime use.
2. If revisions are necessary, such as changes in the law, the contract can be revised on an industry wide scale.
3. The great debate - the "short" contract vs. the "long" contract
 - a. "Short" contracts are sometimes referred to as one page or less contract. With today's statutory and regulatory requirements, it is difficult to have a one page contract that has a reasonably sized font.
 - b. "Long" contracts are sometimes referred to as two pages or more, and provide additional provision that protect the Public adjuster.

D. How to handle uncertainties

1. Date of loss
 - a. An example is with a sinkhole loss. If a policyholder notices cracking but does not realize that it relates to a sinkhole and there are potentially two different insurance companies that covered the property at different times, consider placibng both on notice.
2. Named insureds and contract execution
 - a. Section [626.8796](#) requires that an agreement with a public adjuster must be signed by all named insureds.
 - b. Section 626.8796 also states in part that "[i]f all named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds."
 - c. See Appendix B. Authority to Sign for Unavailable Claimant

E. Legal Requirements for Public Adjuster Contracts

1. Public Adjuster Must Provide a Copy of the Contract to the Insurer.



Section [626.8796](#)(2), Florida Statute now require that **“an unaltered copy of the executed contract must be remitted to the insurer within 30 days after execution.”** This means the Public Adjuster must provide the insurance company with an unaltered copy of the public adjuster services contract within 30 days of entering into the agreement with the insured.

2. The Contract Must Contain the “Fraud Statement” from Section [626.8796](#)(1), Florida Statutes which states the following:

“Pursuant to s. [817.234](#), Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), Florida Statutes.”

3. Under Florida Statute [626.8796](#)(2), the Contract Must Be in Writing and Must Contain the Following Terms:

- a. Information About the Public Adjuster

1. Full Name
2. Permanent Business Address
3. License Number

- b. Public Adjuster Firm’s Full Name

- c. Information About the Insured

1. Full Name
2. Street Address
3. Brief Description of Losses

- d. Compensation Percentage for Public Adjuster’s Services

- e. Claim Type, Either

1. Emergency
2. Non-Emergency
3. Supplemental

- f. Date and Signatures of the Public Adjuster and All Named Insureds

If all insured parties are not available, the public adjuster must submit an affidavit signed by all available named insureds attesting that they have the authority to enter into the contract and settle all claims on behalf of the named insureds.

A sample affidavit is provided in Appendix B. Using the sample affidavit, the public adjuster should complete a separate affidavit for each available named insured.

4. According to Florida Administrative Code [69B-220.051](#) - Conduct of Public Adjusters, Public Adjusters shall ensure that all contracts for their services are written and contain the following terms:
 - a. Full name as specified in Department of Financial Services records for the Public Adjuster signing the contract;
 - b. Permanent business address (No PO Box);
 - c. Permanent business phone number;
 - d. Florida DFS license number;
 - e. Insured's full name, address, and phone number;
 - f. Address of loss;
 - g. A brief description of the loss;
 - h. Insured's insurance company name;
 - i. Insured's insurance policy number;
 - j. Date contract with Public Adjuster was signed by the insured;
 - k. Full compensation to the Public Adjuster;
 - l. If the compensation is based on a share of the insurance settlement, the exact percentage must be specified;
 - m. Any costs to be reimbursed to the Public Adjuster out of the proceeds must be specified in an addendum to the contract;
 - n. Contract must be signed by the Public Adjuster who solicited the contract;

- o. No Public Adjuster may settle a claim unless the terms and conditions of settlement are approved by the Insured.

Remember, all Public Adjuster contracts must be in writing.

5. Section [626.854](#)(7), Florida Statutes states that “The public adjuster’s contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster **at the address specified in the contract.**” (emphasis added).

F. Naming Parties

Example

PUBLIC INSURANCE ADJUSTER SERVICES AGREEMENT					
POLICYHOLDER					
Full Name(s):		Email:		Website:	
Address:		City:	County:	State:	Zip:
Phone: ()		Fax: ()		Cell: ()	
PUBLIC INSURANCE ADJUSTER					
Full Name:			License No.		
Permanent Business Address:		City:	County:	State:	Zip:
Phone: ()		Fax: ()		Email:	Website:
Public Adjuster Firm Name			Claim Type (Emergency, Non-Emergency, Supplemental)		
LOSS					
Loss Address:		City:	County:	State:	Zip:
Date of Loss:	Description of Loss:				
INSURANCE COMPANY					
Name # 1:			Policy/Claim No.		
Name # 2:			Policy/Claim No.		

This section identifies the parties who have contracted with the Public Adjuster and the agreed upon matters with which the Public Adjuster will assist the Policyholder. It provides the parties with basic relevant contact and policy information. Additionally, most of the information in this provision is required by statute and by administrative code [69B-220.051](#). Specifically, see sections 6 & 7.

The parties should be defined in the agreement. The following was used in the Agreement. The Insured is defined as “POLICYHOLDER” and the Public Insurance Adjuster as “PUBLIC ADJUSTER.” Policyholder is used to avoid any misunderstanding about whom the Public Adjuster is dealing with and that there is no practice of law (i.e. representing a “Client”).

G. Services Agreement Provision

1. Services

1. SERVICES: PUBLIC ADJUSTER will act as a public insurance adjuster on behalf of POLICYHOLDER for the services provided and fees will be paid upon the preparation and/or presentment of the claim for loss, damage, and recovery for the LOSS under any insurance policies including those listed above relating to the following insurance coverage provided in the policy(ies). This does not include assisting in any appraisal/mediation/arbitration or legal proceedings whether contractual or extra contractual. Other:

This provision describes the services that will be provided.

Florida Law: Florida law requires a written agreement that describes the services.

2. Notice of Public Insurance Adjuster Services and of Assignment

2. NOTICE OF PUBLIC INSURANCE ADJUSTER SERVICES AND OF ASSIGNMENT: POLICYHOLDER further agrees and confirms that a portion of the recovery from any insurance company has been assigned by POLICYHOLDER to ADJUSTER. Accordingly, POLICYHOLDER has and will direct and authorizes PUBLIC ADJUSTER to direct all insurance companies to make POLICYHOLDER and PUBLIC ADJUSTER co-payees on any payments, checks, or drafts made by insurance company. POLICYHOLDER also directs and authorizes PUBLIC ADJUSTER to direct that all communications, correspondence, checks, and/or drafts be addressed and sent to PUBLIC ADJUSTER with a copy of all communications, correspondence, drafts, and checks sent to the POLICYHOLDER. All risk and/or damage inspections are to be coordinated with and through PUBLIC ADJUSTER. POLICYHOLDER has and will direct and authorizes PUBLIC ADJUSTER to direct all insurance companies to provide PUBLIC ADJUSTER/POLICYHOLDER with the following within ten (10) days from notice for each policy of insurance (including, but not limited to, coverage forms, amendatory endorsements, and/or exclusions) that may in anyway provide coverage for the LOSS: (1) a certified copy of each of the policy(ies), including declaration page and any applicable exclusions, endorsements, etc.; (2) the type and limits of the coverages afforded by each policy; and (3) a statement of any policy or coverage defense that insurer reasonably believes is available to such insurer at the time of filing such statement for each policy. It is requested that the insurance company assure that all policy provisions are complied with in processing POLICYHOLDER's claim. Please note that it is POLICYHOLDER's intention to make a claim for loss and/or damage relating to any replacement cost provisions of the policy of insurance. Further, the insurance company must immediately send to PUBLIC ADJUSTER and POLICYHOLDER any additional or supplemental documentation or information that may be discovered in the future relating to this request.

Pro: The section of the contract discusses two things: (1) the policyholder's assignment of interest to the Public Adjuster which allows the insurance company to send communications directly to the Public Adjuster and make the Public Adjuster a co-payee on any benefits checks and (2) provides a request to the Insurance company for certain documents which the Public Adjuster will want to provide service to the Policyholder.

Con: The Policyholder may object to the requirement that the Policyholder assign interest. In such a situation, the Public Adjuster may not wish to provide services to the claimant. Further, the section may fail to request all the necessary documents.

Florida Law: In prior versions of the contract, the notices in this section were provided in a separate form, which the Public Adjuster would send to the insurance company. However, section [626.8796](#), Florida Statute now requires that **“an unaltered copy of the executed contract must be remitted to the insurer within 30 days after execution.”** As a result, the reasons for a separate notice documents no longer exist and the notices are not included in the main contract.

3. Cancellation of Agreement

3. CANCELLATION OF AGREEMENT: POLICYHOLDER may cancel this Agreement without penalty or obligation within three (3) business days after the date on which this Agreement is executed, as shown below, or within three (3) business days after the date on which POLICYHOLDER or PUBLIC ADJUSTER has notified any insurance company of the claim, by phone or in writing, whichever is later. The notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof of mailing thereof to the PUBLIC ADJUSTER at the address specified above. During any state of emergency, as declared by the Governor and for a period of one (1) year after the date of loss, POLICYHOLDER shall have five (5) business days after the date on which this Agreement is executed to cancel this Agreement. If during the pendency of this Agreement PUBLIC ADJUSTER determines within its sole discretion that POLICYHOLDER can no longer be represented for any reason, PUBLIC ADJUSTER may withdraw from further representation

This provision is required by Florida law.

Florida Law: Section [626.854\(7\)](#), Florida Statutes provides that an insured or claimant may cancel a Public Insurance Adjuster contract to adjust a claim without penalty or obligation within three (3) business days after the date on which the insured or claimant has notified the insurer of the claim, by phone or in writing, whichever is later. The Public Adjuster's contract shall disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing which provides proof thereof, to the Public Adjuster at the address specified in the contract; provided, during any state of emergency as declared by the Governor and for a period of one (1) year after the date of loss, the insured or claimant shall have five (5) business days after the date on which the contract is executed to cancel Public Adjuster's contract

What this means: In cases where there is NO state of emergency declared by the governor, a policyholder has three (3) business days to cancel the agreement; the notice must be in writing and sent by some form that can verify delivery (e.g. certified mail, federal express). This is completely without penalty or obligation, meaning if within that time period a recovery is received or any costs are incurred, if the contract is cancelled, the Public Adjuster receives nothing. In cases where a state of emergency is declared by the Governor, a policyholder has five (5) business days to cancel the agreement; the notice must be in writing and sent by some form that can verify delivery.

Example: The following provision is in the Agreement and addresses cancellation by both parties and the new statutory requirements.

4. Fees for Services

4. FEES FOR SERVICES: POLICYHOLDER understands and agrees that PUBLIC ADJUSTER shall recover its fees based on the amount recovered from an insurance company for the LOSS including, but not limited to, compromise, confession of liability, appraisal awards, judgments, awards and/or settlements of damages, costs, interest, fees, and/or payments of POLICYHOLDER's liens, bills, or claims. PUBLIC ADJUSTER's fee shall be immediately due and payable upon insurance company making any payment. The fee calculation shall be computed before costs are subtracted from the total amount recovered. The amount of the PUBLIC ADJUSTER's fees shall be computed as follows: _____ percent of the amount of claim payments by any insurance company for the LOSS or _____ percent of the amount of any new claim payments in excess of \$ _____ considered as sums due/paid for damages determined by any insurance company for the LOSS. Ten percent of the amount of claim payments by any insurance company for the LOSS, if the claim is based on events that are the subject of a declaration of a state of emergency by the Governor and the claims are made during the period of 1 year after the declaration of emergency. POLICYHOLDER and PUBLIC ADJUSTER understand and agree that the percentages provided in this Agreement comply with Florida law in effect as of the date of this Agreement. If the provision of any state or federal rule or statute requires payment of fees in a lesser amount than those set forth above, then POLICYHOLDER and PUBLIC ADJUSTER understand that POLICYHOLDER will be charged only the lesser amount provided for in said rule or statute. Other: _____

This is the fees for services provision in the Agreement. It attempts to cover a fairly wide area to protect the Public Adjuster from a claim that it should not be paid if certain events occur. The provision provides the maximum percentage permitted by the new law. Of course, a public insurance Adjuster can reduce the percentage.

Florida Law: Section [626.854](#)(11)(b)(1-2), Florida Statutes - A **Public Adjuster may not charge**, agree to, or accept any compensation, payment, commission, fee, or other thing of value **in excess of 20%** of the amount of the insurance claim payment by the insurer for claims based on events that are **NOT** the subject of a declaration of **a state of emergency** by the Governor.

A **Public Adjuster may not charge**, agree to, or accept any compensation, payment, commission, fee, or other thing of value **in excess of 10%** of the amount of the insurance claim payment by the insurer for claims based on **events** that are the subject of a **declaration of a state of emergency by the Governor**. This provision applies to claims made during the period of 1 year after the declaration of emergency. Also, Administrative Code [69B-220.201](#) applies.

What this means: The maximum amount a Public Adjuster can charge for Public Insurance Adjuster services is controlled by Florida Statutes. If there is no declared emergency, the cap is 20%; if there is a declared state of emergency, the cap is 10%.

5. Expenses and Costs

5. EXPENSES/COSTS: POLICYHOLDER understands and agrees that POLICYHOLDER is responsible for all costs and expenses incurred for the preparation and/or presentation of the claim for loss, damage, and recovery for the LOSS. If POLICYHOLDER authorizes in writing PUBLIC ADJUSTER to pay on POLICYHOLDER's behalf such costs and expenses the PUBLIC ADJUSTER deems necessary from time to time to investigate, prepare a claim, settle a claim, and/or take other action the ADJUSTER deems necessary to pursue POLICYHOLDER's claim, POLICYHOLDER understands such costs and expenses advanced by PUBLIC ADJUSTER on POLICYHOLDER's behalf are payable to PUBLIC ADJUSTER and shall be deducted from any recovery after fees for services are computed and paid to PUBLIC ADJUSTER. If there is any recovery, whether during the time of service by PUBLIC ADJUSTER, service by another public insurance adjuster, representation by an attorney, or without services provided by an adjuster or attorney, PUBLIC ADJUSTER will be entitled to recovery of all reasonable fees and expenses/costs expended in the processing of POLICYHOLDER's claim. POLICYHOLDER understands that if POLICYHOLDER elects to terminate PUBLIC ADJUSTER, POLICYHOLDER shall immediately pay PUBLIC ADJUSTER all costs and expenses of PUBLIC ADJUSTER and shall remain responsible for all fees for services rendered pursuant to this Agreement and PUBLIC ADJUSTER may have a lien or a claim for quantum meruit on any recovery from this claim.

This is the expense/cost provision in the Agreement. It is an attempt to clarify that the Policyholder is responsible for costs in addition to fees. It also attempts to clarify that the Policyholder must pay the costs, unless the Public Adjuster decided to do so. Of course, with every provision, it is subject to interpretation. However, considering the limited space, it provides a good argument in favor of the Public Adjuster.

Pro: This provision defines the costs that the public insurance Adjuster will pay for that must be reimbursed, either at the resolution or if the Policyholder dismisses the Public Adjuster. It also includes an interest charge. Of course, the costs that will be incurred can be limited.

Con: The Public Adjuster does not want to incur any costs. Accordingly, this provision can be eliminated or revised. Additionally, the provision providing for interest may be objectionable to the Policyholder.

Florida Law: Administrative Code Rule [69B-220.201](#) provides that any expenses that are to be repaid, and the terms of repayment, need to be in writing.

6. Letters of Protection

6. LETTER OF PROTECTION: POLICYHOLDER understands and agrees that if it becomes necessary to retain an attorney, POLICYHOLDER authorizes and agrees to a Letter of Protection for the PUBLIC ADJUSTER. POLICYHOLDER shall direct POLICYHOLDER'S attorney to prepare a Letter of Protection, which is a legally binding document signed by the PARTIES and the attorney, that directs POLICYHOLDER's attorney to pay the fees and costs due under this Agreement from any recovery by POLICYHOLDER for the LOSS.

This is the letter of protection provision in the Agreement. Letters of protection are a valuable tool for a Public Adjuster to use to protect his/her interest. Unfortunately, they are often misunderstood and misapplied by Public Adjusters and attorneys. However, it is better to have some argument instead of none.

Pro: This provision is an attempt to protect the Public Insurance Adjuster when an attorney is retained by stating that the Policyholder has agreed to enter into a letter of protection. **BE AWARE THAT THIS PROVISION IS NOT A LETTER OF PROTECTION. IT JUST STATES THAT THE POLICYHOLDER WILL ENTER INTO ONE. SEE SECTION V. 'LETTERS OF PROTECTION', BELOW.** In essence, a Public Adjuster still has to have the Policyholder, the attorney, and the Public Adjuster enter into (and execute) a letter of protection. A properly written and executed letter of protection provides that the Public Adjuster will recover some of or all of his or her fees and costs in the event that the Policyholder obtains a reasonable recovery. The letter “protects” the Public Adjuster’s claim for payment under its agreement. There are other issues regarding letters of protection that are beyond the scope of this booklet.

Con: This provision may be too detailed for the claimant. The Public Adjuster may need to retain his or her own attorney to review the letter of protection to ensure that all of the Public Adjuster’s rights are protected. It also may place the Public Adjuster and Policyholder against each other if the Policyholder fails to comply with this provision.

Florida Law: Florida courts generally recognize letters of protection as valid and enforceable contracts. *Winans v. Weber*, 979 So.2d 269 (Fla. 2d DCA 2007); *Koenig v. Theofilos*, 933 So.2d 1293 (Fla. 4th DCA 2006). A contract that is entered into by the Public Adjuster, Policyholder, and the Policyholder’s attorney creates a legal obligation of that attorney to the Public Adjuster. Fla. Bar Ethics Opinion [02-4](#) (2002).

What it means: If the Policyholder’s claim requires retaining the services of an attorney, the Public Adjuster should ask the attorney to obtain approval from the Policyholder to enter into a letter of protection as the Agreement provides. After the attorney receives authority from his/her client, the attorney could then give the Public Adjuster a letter of protection stating that the Public Adjuster’s fees and costs will be paid from any recovery obtained from the insurance company. These are legal contracts and there is no “best” way to approach them 100% of the time. Public Adjusters should be aware that the attorney must be a party to the letter of protection before the attorney is bound by the letter of protection. It is not possible to enter into a letter of protection in which the attorney will be required to hold the funds due to the Public Adjuster unless the attorney is a party to the letter of protection agreement. Naturally, there

are certain caveats to be aware of and for that reason, the Public Adjuster should consider retaining an attorney to review the document before entering into one. Remember, the provision will require the Policyholder's attorney to prepare this letter; however, that attorney only represents the Policyholder, not the Public Adjuster. Again, there are many factors to consider regarding letters of protection that exceed the scope of this booklet.

7. Provisions Concerning Services

7. PROVISIONS CONCERNING SERVICES: POLICYHOLDER and PUBLIC ADJUSTER understand and agree that neither party shall settle any claims arising out of the LOSS without first obtaining the consent of the other. POLICYHOLDER's deposit or negotiation of a claim payment is evidence of POLICYHOLDER's consent to settlement. POLICYHOLDER agrees to cooperate with PUBLIC ADJUSTER, to be available for preparation of the claim, conferences, appraisal, and/or mediation, and to keep PUBLIC ADJUSTER fully informed of all matters relating to this LOSS. POLICYHOLDER acknowledges that PUBLIC ADJUSTER has made no guarantees regarding the disposition or results of any stage of the claims process, and all expressions made on behalf of PUBLIC ADJUSTER are the opinion of PUBLIC ADJUSTER based on information known at that time. This Agreement provides the complete and only agreement between POLICYHOLDER and PUBLIC ADJUSTER with respect to the above referenced LOSS, and supersedes all prior written and oral offers, proposals, and agreements. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing. In the event a dispute between the parties arises and suit is filed, the venue of such suit shall be in the County in Florida where PUBLIC ADJUSTER's above address is located. The substantive law of the State of Florida shall govern this Agreement. Any failure by either party to comply with any provision of this Agreement may be waived, but only if such waiver is in writing and signed by the other party. Any failure to insist upon or enforce compliance with any provision of this Agreement shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if hand delivered, sent by Federal Express or similar overnight carrier, or sent by registered or certified United States Mail, return receipt requested, to the addresses set forth in this Agreement, or to such other address as a party may designate in accordance with this provision, unless specified otherwise for a particular provision in this Agreement. This Agreement shall not be construed more strictly against A PUBLIC DJUSTER simply because it was the party responsible for preparing this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. A copy of this Agreement transmitted by telefacsimile and/or email shall be deemed an original.

This provision in the Agreement contains several subparts: (a) Cooperation Provisions, (b) Merger Clause, (c) Venue/Forum Provision, (d) Governing Law Provision, (e) Nonwaiver Provision, (f) Notice Provision, (g) Construction, (h) Counterparts, and (i) Transmission. These are common provisions that most likely should be in any agreement, if possible. These provisions can provide a level of protection from arguments that can be stumbling blocks to enforcing the Agreement. Each provision is discussed below.

a. Cooperation Provisions

The following are the cooperation provisions in the Agreement:

7. PROVISIONS CONCERNING SERVICES: POLICYHOLDER and PUBLIC ADJUSTER understand and agree that neither party shall settle any claims arising out of the LOSS without first obtaining the consent of the other. POLICYHOLDER's deposit or negotiation of a claim payment is evidence of POLICYHOLDER's consent to settlement. POLICYHOLDER agrees to cooperate with PUBLIC ADJUSTER, to be available for preparation of the claim, conferences, appraisal, and/or mediation, and to keep PUBLIC ADJUSTER fully informed of all matters relating to this LOSS. POLICYHOLDER acknowledges that PUBLIC ADJUSTER has made no guarantees regarding the disposition or results of any stage of the claims process, and all expressions made on behalf of PUBLIC ADJUSTER are the opinion of PUBLIC ADJUSTER based on information known at that time.

Pro: Protects Public Adjusters and Policyholders. Public Adjusters are protected and have an "out" from policyholders who are uncooperative. Policyholders are protected from Public Adjusters who settle claims without their consent. Furthermore Public Adjusters are protected from a policyholder claiming that there was a guarantee on the amount recovered.

Con: May discourage policyholders from entering into a contract. However, if a Policyholder does not want to agree to this, the Public Adjuster may want to reconsider providing services to this Policyholder.

Florida Law: Administrative Code [69B-220.051](#) states that an Adjuster may not settle a claim unless the terms and conditions of settlement are approved by the insured. Further, section [626.854](#)(8), Florida Statutes provides that it is an unfair and deceptive insurance trade practice pursuant to s. [626.9541](#) for a Public Adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

What this means: A Public Adjuster is required to obtain the Policyholder's authority before settling any claim. Additionally, a Public Adjusters' advertisements must be truthful. This statute is in many ways similar to the rules governing attorneys' advertisements. Because this is part of the new statutes, there have not been any cases decided on this statute, thus it is difficult to predict what the court will hold as "untrue, deceptive, or misleading." However, assuming a court would apply that standard the same way that the standard is applied to attorneys, a Public Adjuster should assume that the rule is strictly construed. Generally, anything that guarantees a certain result or advertisements that make it seem as if the Public Adjuster has some sort of advantage over other Public Adjusters (beyond education and experience) will probably be found deceptive or misleading. Any sort of superlative (e.g. "the best"), even if it is "mere puffery" will likely be found in violation of this statute.

b. Merger Clause

The following is the merger clause in the Agreement:

This Agreement provides the complete and only agreement between POLICYHOLDER and PUBLIC ADJUSTER with respect to the above referenced LOSS, and supersedes all prior written and oral offers, proposals, and agreements. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing.

Pro: This provision is important to try to counter attempts to raise oral or written statements inconsistent with the terms of the agreement provisions.

Con: This provision may be too detailed for the claimant. Additionally, a Public Adjuster will be prevented from relying on an oral promise given by the Policyholder, unless it is later confirmed and agreed to in writing. A Public Adjuster who is in the practice of making oral agreements beyond the scope of their written service agreement will have to modify his/her standard service agreement to incorporate oral agreements entered into with the Policyholder.

Florida Law: Representations which precede and accompany the making of a contract are presumed to have merged in the written contract. *Windowmaster Corp. v. Jefferson Const. Co.* 114 So.2d 626, 628 (Fla. 3d DCA 1959)

What this means: A party to a contract may be held responsible for prior statements, whether they are oral or written, if there is not a merger clause. By using the merger clause, a party is protected against any prior statements that are inconsistent with the terms of the contract as long as fraud has not been committed.

c. Venue/Forum Provision

The following is the venue/forum provision in the Agreement:

In the event a dispute between the parties arises and suit is filed, the venue of such suit shall be in the County in Florida where PUBLIC ADJUSTER's above address is located.

Pro: This provision specifies where a lawsuit can be brought, which is the location of the Public Adjuster's business described in the Agreement. It is helpful if a claim is brought by or pursued against the Adjuster.

Con: The Policyholder may object to having venue anywhere but where the subject property is located.

Florida Law: Forum selection clauses can be enforced absent showing that enforcement of clause would be unreasonable or unjust. *Manrique v. Fabbri*, 493 So.2d 437 (Fla.,1986)

What it Means: These clauses are enforceable, provided they are not “unreasonable or unjust,” where “unreasonable or unjust” means more than just “mere inconvenience or additional expense” but “that trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court.” This meaning has been construed more narrowly in various Florida jurisdictions and may differ depending on which district’s law applies. For example *Harris v. Caribank*, 536 So.2d 394 (Fla. 4th DCA 1989) states that the parties to a contract may agree to submit to jurisdiction of particular forum if that forum is not chosen because of one party’s overwhelming bargaining power, enforcement would not contravene public policy, and purpose of agreement is not to transfer local dispute to remote and alien forum in order to inconvenience one or both of parties.

d. Governing Law Provision

The following governing law provision is used in the Agreement:

the State of Florida shall govern this Agreement.	The substantive law of
--	-------------------------------

Pro: This provision specifies that Florida law controls the interpretation of the contract. It is helpful if a claim is brought by or pursued against the Public Adjuster.

Con: This provision may be too detailed for the Policyholder and may be objectionable to out-of-state policyholders who want the agreement interpreted under the laws of the state where the subject property is located.

Florida Law: Generally, matters bearing on execution, validity, interpretation, and obligations of contracts are determined by laws of place where the contract is made, although matters connected with performance are regulated by the law of the place where contract by its terms may have been provided to be performed and matters relating to procedure in actions on contract depends on the law of the forum. *State-Wide Ins. Co. v. Flaks*, 233 So.2d 400 (Fla. 3d DCA 1970)

What it means: The governing law provision, also known as a choice of law provision, works in conjunction with the venue/forum clause and provides further protection that, even if a case is not brought in Florida, Florida law still governs. The difference between the two is the forum selection clause controls WHERE the case may be brought, the governing

law provision controls WHAT law applies. For example, a Florida Public Adjuster may enter into a contract with a policyholder in another state. In that situation a contractual dispute may be subject to the law of that state as opposed to Florida law, even if the forum selection clause requires the case to be brought in a Florida court. In general, a court will apply the law of whatever forum it is in, unless one party challenges that choice of law. A choice of law question is decided differently in different states, some apply the law where the contract was entered into, while others apply the law of the state with the “most substantial relationship” to the parties and the contract. Use of a governing clause prevents this complicated issue from arising.

e. Nonwaiver Provision

The following nonwaiver provision is used in the Agreement:

Any failure by either party to comply with any provision of this Agreement may be waived, but only if such waiver is in writing and signed by the other party. Any failure to insist upon or enforce compliance with any provision of this Agreement shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure.

Pro: This helps prevent a party from inadvertently waiving, or giving up, requirements under the contract.

Con: This provision may be too detailed for the claimant and may be held against Public Adjusters who do not follow the terms of their own agreements.

Florida Law: Provision in contract specifying that any extras had to be authorized by owners in writing was valid but could be waived and waiver could be established by subsequent course of dealings between parties. *Broderick v. Overhead Door Co. of Fort Lauderdale*, 117 So.2d 240 (Fla. 2d DCA 1959)

What this means: This provision basically prevents what happened in the *Broderick* case. If a provision requires a party to do “X” but over the course of the contract, a party has done “Y”, just because the other party has not asked/insisted/forced the party to do “X” does not mean that the provision has been waived.

f. **Notice Provision**

The following notice provision is used in the Agreement:

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if hand delivered, sent by Federal Express or similar overnight carrier, or sent by registered or certified United States Mail, return receipt requested, to the addresses set forth in this Agreement, or to such other address as a party may designate in accordance with this provision, unless specified otherwise for a particular provision in this Agreement.

This provision is required under the new statute regulating Public Adjusters. This is especially important for the cancellation of contracts. This provision can better define the parties' rights and avoid potential disputes with the Policyholder.

Florida Law: The case of *Florida Recycling Services, Inc. v. Greater Orlando Auto Auction, Inc.* 898 So.2d 129 (Fla. 5th DCA 2005) held that a party did not comply with the notice of breach requirement in parties' contract by making phone calls, given that language chosen by the parties for their contract clearly required a written notice of breach and a written notice of termination and there was no finding that opposing party waived the written notice requirement or otherwise gave up its contractual right to written notice of breach.

What this means: While the statute governing Public Adjusters requires notice as to certain events (e.g. cancellation of the contract), it does not address other types of notice. This provision applies to all notice issues besides those addressed in the Cancellation of Agreement provision.

g. **Construction Provision**

The following construction provision is used in the Agreement:

This Agreement shall not be construed more strictly against A PUBLIC DJUSTER simply because it was the party responsible for preparing this Agreement.

Pro: This provision helps protect the Public Adjuster from the contract being more strictly construed, or interpreted, against the Public Adjuster because he/she wrote the Agreement.

Con: This provision may be too detailed for the Policyholder.

Florida Law: Florida law holds that an expressed provision cannot generally be varied by an implied one, and in cases of doubt a contract is construed most strongly against party who prepared it. *Niagara Therapy Mfg. Corp. v. Niagara Cyclo Massage of Miami, Inc.* 196 So.2d 474 (Fla. 3d DCA 1967). Ambiguity, if any, appearing in prepared writing will be

construed more strongly against party using language and for whose benefit language was inserted in the instrument. *Watson v. Poe*, 203 So.2d 14 (Fla. 4th DCA 1967.)

What this means: An ambiguous word or phrase is one that is open to more than one interpretation. Generally, ambiguous provisions in a contract will be interpreted more strictly against the person who wrote the contract. This provision basically negates this matter of law as it applies to the Agreement.

h. Counterparts Provision

The following counterparts provision is used in the Agreement:

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

Pro: This provision allows the parties to sign separate copies of the same Agreement and the Agreement will still be binding.

Con: This provision may be too detailed for the Policyholder. Additionally, issues may arise if there are two different copies of the contract.

Florida Law: Florida law permits counterpart provisions.

What this means: If a Public Adjuster makes two copies of the contract, and the Policyholder signs one, and the Public Adjuster signs the other, both will be considered originals and together will be considered as if one copy of the contract was signed by both parties.

i. Transmission Provision

The following transmission provision is used in the Agreement:

A copy of this Agreement transmitted by telefacsimile and/or email shall be deemed an original.

Pro: This provision can better define the parties' rights and avoid potential disputes with the claimant. It protects both parties in case the original is ever lost or destroyed.

Con: This provision may be too detailed for the Policyholder.

Florida Law: Pursuant to section [90.953](#), Florida, a copy is acceptable to the same extent as the original unless it is a negotiable instrument,

security, or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment. Furthermore, a copy may not be acceptable where a genuine question is raised about the authenticity of the original or given the circumstances; it is unfair to admit the duplicate.

What this means: This provision reinforces what is already stated in Florida law, that a copy of the Agreement is just as good as an original.

8. Exculpatory Provision

The following exculpatory provision is used in the Agreement:

8. NO LEGAL SERVICES PROVIDED: This Agreement is not for legal services. Any legal services must be provided by an attorney. POLICYHOLDER understands and agrees that POLICYHOLDER will need to enter into a separate written agreement with an attorney of his/her choice and make separate payment for such services provided for representation.

Pro: This provision may be helpful if there is a claim that the Adjuster is “practicing law.” Of course, it is the actual conduct of the Public Adjuster that will be considered when determining whether the Public Adjuster was practicing law. However, with this provision, at least the Agreement may not be used against the Public Adjuster. Also, this provision clarifies that the Policyholder will need to retain her/his own attorney.

Con: It will not protect a Public Adjuster whose conduct amounts to the practice of law.

Florida Law: Pursuant to section [454.23](#), Florida Statutes “Any person not licensed or otherwise authorized to practice law in this state who practices law in this state or holds himself or herself out to the public as qualified to practice law in this state, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in this state, commits a felony of the third degree.” *State v. Sperry*, 140 So.2d 587 (Fla. 1962) defines the unauthorized practice of law as “giving advice and performance of service for another as course of conduct... if actions affect important rights of person under law...” *Larson v. Lesser*, 106 So.2d 188 (Fla. 1958) states that a Public Adjuster should not prosecute or defend claims, but merely adjust claims on behalf of a claimant.

What this means: The unauthorized practice of law (UPL) is a serious offense, and it is an issue that a Public Adjuster must always be cognizant of while performing public insurance adjuster services. Throughout this presentation and throughout the sample documents provided, words

such as “client” and “represent” are not used. This is another attempt to make it clear that legal representation is not being provided.

9. Statement of Claim

The following Statement of Claim provision is used in the Agreement:

9. STATEMENT OF CLAIM: POLICYHOLDER understands and acknowledges that pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.803, or s. 775.084, Florida Statutes. POLICYHOLDER shall confirm the accuracy and completeness of any and all information and documentation provided to PUBLIC ADJUSTER and any and all forms or other documents signed and/or provided to the insurance company for purposes of adjusting through the preparation and submission of a claim for loss, damage, and recovery under any insurance policy.

This provision is required by statute and is a recitation of the language in section [817.234](#), Florida Statutes concerning potential fraud. It is another exculpatory clause to help the Public Adjuster when accusations are made.

Florida Law: Section [626.8796](#) and [626.8797](#), Florida Statutes provides for fraud statements. All contracts for Public Insurance Adjuster Services AND Proof of Loss Statements must be in writing and must prominently display the following statement:

“Pursuant to s. [817.234](#), Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#), Florida Statutes.”

What this means: This provision applies to both the Public Adjuster and the Policyholder and states that if either attempts to make a claim that they know is false, that they are committing a felony. This is a serious provision that both the Public Adjuster and Policyholder need to be aware of and closely follow.

10. Attachments

The following attachments provision is used in the Agreement:

10. ATTACHMENTS: There ☐ are ☐ are not (initial one) attachments to this Agreement.

Pro: This provision helps protect the Public Adjuster if there is a claim that there were attachments to the agreement and there were not.

Con: It makes the agreement longer.

11. Signature and Date Lines

The following signature and date lines are used in the Agreement:

POLICYHOLDER is signing this Agreement on POLICYHOLDER's own behalf and in any representative capacity appropriate to the circumstances. By executing below, POLICYHOLDER specifically agrees to be bound by this Agreement, including the provisions set out above and on the back of this Agreement, which are incorporated herein for all purposes. POLICYHOLDER hereby acknowledges receipt of a copy of this Agreement and that the Adjuster that solicited this Agreement has signed below.

Date: _____	By: _____ Signature of POLICYHOLDER
	_____ Print Name of POLICYHOLDER
Date: _____	By: _____ Signature of POLICYHOLDER
	_____ Print Name of POLICYHOLDER
Date: _____	By: _____ Signature of PUBLIC ADJUSTER
	_____ Print Name of PUBLIC ADJUSTER

This provision requires the signature of the parties and the date that each signed the agreement. It indicates that all parties intend to be bound by the contract.

Florida Law: Administrative Code 69B-220.051 specifies that the date the Policyholder signed must be included. A contract may be binding on a party despite the absence of a party's signature. The object of a signature is to show mutuality or assent, but these facts may be shown in other ways, for example, by the acts or conduct of the parties. *Integrated Health Services of Green Briar, Inc. v. Lopez-Silvero* 827 So.2d 338, 339 (Fla.

3d DCA 2002) quoting *Gateway Cable T.V., Inc. v. Vikoa Contruction Corp.*, 253 So.2d at 463 (Fla. 1st DCA 1971). A party, who neither has nor signifies intention to close contract until it is fully expressed in written instrument attested by parties' signatures, is not bound thereby until signatures are affixed, and, if written draft is viewed as consummation of negotiation for contract, there is no contract until written contract is finally signed. *Rork v. Las Olas Co.* 156 Fla. 510, 23 So.2d 839 (Fla. 1945)

What this means: A signature is a party's indication that it consents to be bound to the terms of the contract. While case law states that it is possible to be bound to a contract that was not signed but has been performed, other case law states that if a party does not intend to be bound by that contract without a signature, then the contract does not exist until the signature is there. It is best to not have these types of ambiguities and be sure that all parties to the contract sign it.

H. Other Provisions to Consider

1. Arbitration Provision

Pro: This provision limits the Policyholder's rights to only resolve disputes in arbitration. It is substantially similar to the one used by real estate brokers.

Con: This provision limits the Public Adjuster's and Policyholder's right to a jury trial, which is the forum that best holds insurance companies responsible for unreasonable conduct. An argument can be made that if Public Insurance Adjusters limit jury trials, then insurance companies should be allowed to as well. Additionally, arbitration can be a very expensive process. The last five week arbitration the presenter did cost the parties approximately \$400,000.00, not including attorneys' fees.

Florida Law: Parties to a contract may lawfully require arbitration before they resort to legal process but they may not, by their contract, totally exclude the courts from a consideration of their dispute under every circumstance which may possibly arise. *Mike Bradford & Co. v. Gulf States Steel Co.*, 184 So.2d 911 (Fla. 3d DCA., 1966).

What this means: An arbitration clause is enforceable, but ultimately may not keep an action out of court. The aforementioned case goes on to say that the right to arbitrate given by an arbitration clause is waiveable. When a party commences an action, it may waive its right to enforce the arbitration clause and when the other party responds (without demanding arbitration) it, too, may waive its right to arbitration. Nevertheless, in a situation where a Policyholder files suit over the terms of the contract, this

clause would give the Adjuster the right to demand arbitration rather than continue in court.

Example:

Dispute Resolution: This Agreement will be construed under Florida law. All controversies, claims, and other matters in question arising out of or relating to this transaction or this Agreement or its breach will be settled as follows:

(a) Disputes concerning entitlement to deposits made and agreed to be made: Buyer and Seller will have 30 days from the date conflicting demands are made to attempt to resolve the dispute through mediation. If that fails, Escrow Agent will submit the dispute, if so required by Florida law, to Escrow Agent's choice of arbitration, a Florida court or the Florida Real Estate Commission. Buyer and Seller will be bound by any resulting award, judgment, or order.

(b) All other disputes: Buyer and Seller will have 30 days from the date a dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration in the county where the Property is located. The arbitrator may not alter the Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Any disputes with a real estate licensee named in paragraph 17 will be submitted to arbitration only if the licensee's broker consents in writing to become a party to the proceeding. This clause will survive closing.

(c) Mediation and Arbitration; Expenses: "Mediation" is a process in which parties attempt to resolve a dispute by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Arbitration Association ("AAA") or other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. "Arbitration" is a process in which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees, costs and expenses, including attorneys' fees, and will equally split the arbitrators' fees and administrative fees of arbitration. In a civil action to enforce an arbitration award, the prevailing party to the arbitration shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses.

2. Nonjury Provision

Pro: This provision limits the Adjuster's and Policyholder's right to only a nonjury trial, meaning only a judge will decide disputes. It also includes a venue provision.

Con: This provision limits the Public Adjuster's and Policyholder's right to a jury trial, which is the forum that best holds insurance companies responsible for unreasonable conduct. An argument can be made that if Public Insurance Adjusters limit jury trials, then insurance companies should be allowed to as well.

Florida Law: We are unaware of any public policy reason why the provision [waiving jury trial]...should not be enforced in [Florida]....[B]oth [parties are] experienced in commercial leasing, agreed that any controversy arising under their lease would be tried non-jury. The waiver is clear, unambiguous, and should be given its intended force and effect between them. *Central Inv. Associates, Inc. v. Leasing Service Corp.* 362 So.2d 702, 704 (Fla. 3d DCA 1978).

What this means: These provisions are valid and enforceable. There may be some question as to how it is situated in the contract. By making the statement bold and clear, this reduces the argument that it was not noticeable. The example below gives a good idea of what the provision should look like. However, the court is going to take into account the other party's background as well as whether the language is clear and unambiguous. While it may be enforceable, a court could be persuaded to disregard the provision in certain circumstances.

Example:

Disputes concerning any matter arising out of, relating to, or under this Agreement shall not be subject to arbitration but shall be subject to appropriate legal action in the Circuit Courts of the State of Florida in _____, Florida. **EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE, ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES TO THIS AGREEMENT.**

3. Attorneys' Fee Provision

Pro: This provision may encourage both parties to resolve a dispute to avoid incurring the other parties' attorneys' fees. If the Public Adjuster is forced to pursue action against a Policyholder and is successful, the Public Adjuster may recover his/her attorneys' fees, if the Policyholder is collectable.

Con: If one party does not have sufficient assets to collect against, there will not be any recovery. If a Policyholder successfully sues the Public Adjuster, the Public Adjuster is liable for attorney fees.

Florida Law: Section 57.105(2), Florida Statutes provides for mutuality of contractual attorney's fees." *Personnel One, Inc. v. John Sommerer &*

Co., P.A. 564 So.2d 1217, 1219 (Fla. 3d DCA 1990) quoting *Adler v. Key Financial Svcs., Inc.*, 553 So.2d 284, 285 (Fla. 3d DCA 1989).

What this means: The “American Rule” that our courts follow means that when one side sues another, each side incurs its own fees and costs. This rule can be contracted around, but the terms must be explicit. For example, *Ohio Realty Inv. Corp. v. Southern Bank of West Palm Beach* 300 So.2d 679 (Fla. 1974.) states that unless the provision explicitly mentions appellate proceedings, then those fees are not recoverable. These provisions are valid so long as they are mutual – meaning that it would not be valid if the contract only forced one side to pay fees. To be enforceable, both sides must assume the risk.

Example:

In the event any party is required to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to payment of their reasonable attorneys' and legal assistants' fees and costs by the non-prevailing party, incurred before, during, and after suit is filed, in appellate proceedings, and in bankruptcy.

4. Document Storage Provision

Pro: This provision addresses the current state of document storage and can help protect a Public Adjuster when he/she is only using electronic storage. If a Public Adjuster does not keep paper copies of files, then issues can arise both in and outside of litigation concerning the contract. This provision attempts to mitigate those harms.

Con: This provision may be too detailed for the Policyholder. Outside litigation, a party may reject the fact that the original document cannot be produced. Inside litigation, the other side may object to production of an imaged copy of the contract as violation of the “best evidence rule.”

Florida Law: Pursuant to section [90.953](#), Florida Statutes, a copy is acceptable to the same extent as the original unless it is a negotiable instrument, security or any other writing that evidences a right to the payment of money, is not itself a security agreement or lease, and is of a type that is transferred by delivery in the ordinary course of business with any necessary endorsement or assignment. Furthermore, a copy may not be acceptable where a genuine question is raised about the authenticity of the original or given the circumstances; it is unfair to admit the duplicate.

What this means: This provision reinforces what is already stated in Florida law, that a duplicate of this agreement is just as good as an original.

Example:

The POLICYHOLDER understands and agrees that the PUBLIC ADJUSTER may image and electronically file all documents (collectively, the “Imaged Documents”) and destroy the originals of the Imaged Documents, including all original signatures on those documents. POLICYHOLDER authorizes the PUBLIC ADJUSTER to take this action, and understands and agrees that, as a result, neither the original documents, nor any of the original signatures on such documents, will remain available to POLICYHOLDER or the PUBLIC ADJUSTER for any purpose including, but not limited to, for use in any legal proceeding arising out of or relating to the documents (“Proceeding”). POLICYHOLDER knowingly, willingly, and expressly: (i) waives all rights relating to, and (ii) agrees, based on the PUBLIC ADJUSTER’s reliance on, among other things, POLICYHOLDER’s agreements and authorizations, that POLICYHOLDER is estopped from asserting any claim, defense, or objection, whether evidentiary or otherwise, arising out of or related to the imaging and destruction of original documents and all original signatures on such documents, including, without limitation, any claim, defense, or objection arising out of or related to the PUBLIC ADJUSTER introducing and/or court accepting, into evidence in any Proceeding copies of Imaged Documents, including all imaged signatures, in place of original documents.

5. Miscellaneous Provisions

Pro: These provisions can better define the parties’ rights and avoid potential disputes with the policyholder.

Con: These provisions may be too detailed for the Policyholder.

Examples:

The POLICYHOLDER understands that all communications with the PUBLIC ADJUSTER are important and will immediately advise in writing of any change in telephone number or in the address provided above. The POLICYHOLDER understands and agrees to the PUBLIC ADJUSTER using the above address for all communications with the POLICYHOLDER, as well as other methods of communication.

The POLICYHOLDER understands that the adjuster signing this Agreement on behalf of the PUBLIC ADJUSTER and other adjusters and assistants may participate in the POLICYHOLDER’s representation to the extent appropriate as determined by the PUBLIC ADJUSTER.

III. LETTERS OF PROTECTION

While it is essentially a legal subterfuge, a letter of protection is a valuable tool for a Public Adjuster to use to try to protect his/her interest. Unfortunately, it is often

misunderstood and misapplied by Public Adjusters and attorneys. However, it is better to have some argument instead of none.

If the Policyholder's case requires retaining the services of an attorney, the Public Adjuster should ask the attorney to obtain the Policyholder's approval to enter into a letter of protection as the Agreement provides. After the attorney receives authority from his/her client, the attorney may then give the Adjuster a letter of protection, which will provide that the Adjuster's fees and costs will be paid from any recovery obtained from the insurance company. A contract that is entered into by the Public Adjuster, Policyholder, and the Policyholder's attorney creates a legal obligation of that attorney to the Adjuster. Fla. Bar Ethics Opinion [02-4](#) (2002).

Florida courts generally recognize letters of protection as valid and enforceable contracts. *Winans v. Weber*, 979 So.2d 269 (Fla. 2d DCA 2007); *Koenig v. Theofilos*, 933 So.2d 1293 (Fla. 4th DCA 2006). These are legal contracts and there is no "best" way to approach them 100% of the time. Public Adjusters should be aware that the attorney must be a party to the letter of protection (and sign it) before the attorney is bound by the letter of protection. Otherwise, an attorney may not be required to hold the funds due to the Public Adjuster. Of course, there are certain caveats to be aware of and for that reason, the Public Adjuster should consider retaining an attorney to review the document before entering into one.

Remember, the provision will require the Policyholder's attorney to prepare this letter; however, that attorney only represents the Policyholder, not the Public Adjuster. Again, there are many factors to consider regarding letters of protection that exceed the scope of this booklet which can be discussed with an attorney.

IV. JOHN BALES ATTORNEYS

A. *Overview of John Bales Attorneys*

John Bales Attorneys is committed to promptly, efficiently, and aggressively meeting the needs of our clients and achieving quality results. We can help protect your rights and get you the justice you deserve. Through understanding our clients' unique needs in an ever changing, complex environment, the firm strives to establish and maintain long-term, mutually beneficial attorney client relationships.

Our attorneys have many years of combined experience in representing individuals. The firm is "AV" rated, the highest rating given by the lawyer rating service of Martindale Hubbell. We have represented many people and their businesses in Florida. Through a nation-wide network of attorneys, we are able to handle claims anywhere in the United States. To increase efficiency, over 30 client managers, law clerks, and

administrative staff are employed. The firm has the capability to interface with our clients' compatible systems, document imaging capabilities, and an in-house law library with computer-based legal research resources.

We are innovative and results-oriented when answering the wide variety of legal needs of our clients. Clients are kept advised of strategies to avoid or minimize the problems associated with litigation. Thus, resolution of disputes through negotiation, mediation, and arbitration is encouraged when appropriate. However, when litigation is in our client's best interest, our attorneys have extensive experience in providing effective representation in all phases of the litigation process, including appeals.

Areas of representation include personal injury, insurance disputes, auto accidents, motorcycle accidents, tractor trailer accidents, defective products, drug injuries, nursing home abuse and neglect, medical malpractice, dental malpractice, sinkhole damage, mold damage, consumer disputes, social security claims, employment law, and other matters involving a tragic accident or serious injury. Attached is a more comprehensive list of the areas of law in which we provide representation.

We have represented people in many types of claims when they have been injured or suffered a loss. An auto, motorcycle, or truck accident can be overwhelming. Other types of improper conduct such as medical malpractice, dental malpractice, and nursing home abuse and neglect should not be tolerated. If you have been a victim of a medical mistake or abuse, we can pursue the wrongdoer for damages caused by your injuries and suffering.

Insurance disputes caused by an insurance company unreasonably denying or delaying a claim can cause financial ruin. When, for example, your insurance company will not pay for your damage created by a devastating storm, sinkhole, and/or mold, we have experience dealing with the insurance company and recovering on your insurance claim. Another important responsibility is helping our community. We try to give back to the community that we serve by contributing and participating in charitable causes and events. Our attorneys, case managers, and staff take part in safety programs for children, adults, and senior citizens. Members of our firm participate and hold leadership positions in a variety of civic, professional, and charitable organizations.

We believe that our values and commitment are as much a part of our success as the quality of our legal services. As a result, we enjoy longstanding relationships with our clients who, in turn, regularly recommend us to their friends, family, and associates. For your review, attached is a listing of the areas of law and a biography of each of the attorneys in our firm. Our goal is to provide our clients with quality legal services as efficiently as possible. We appreciate your interest in John Bales Attorneys and invite you to learn more about the people that contribute to our continuing success in representing clients on a wide range of legal matters.

B. Areas of Law

Airplane Accidents

Animal Attacks

Auto Accidents

Boating Accidents

Business Disputes

- Collections
- Construction Claims
- Contract Claims
- Contract Negotiations
- Corporations
- Environmental Claims
- Non Compete Claims
- Real Estate Claims
- Securities Claims

Consumer Fraud

Construction Disputes

- Arbitrations
- Bond Claims
- Contracts
- Insurance Claims
- Licensing Issues
- Lien Claims
- Litigation

Construction Accidents

Class Action Litigation

Defective Products

Nursing Home Abuse & Neglect

Premises Liability

Dental Malpractice

Dog Bite Accidents

Drug Injuries

DUI/Dram Accidents

Eminent Domain

Employment Law

- Overtime & Wage Disputes
- Wrongful Termination
- Retaliation
- Discrimination
- Harassment
- EEOC
- Whistle Blower

Insurance Claim Disputes

- Property Loss
- Homeowner Claims
- Fire Claims
- Sinkhole Claims
- Disability Claims
- Commercial General Liability
- Automobile Liability Claims
- Uninsured Motorists
- Business Claims
- Life Claims
- Health Claims
- Bad Faith

Malpractice

- Dental Malpractice
- Medical Malpractice

Medical Malpractice

Personal Injury & Property Damage

Tractor Trailer Accidents

Railroad Accidents

Traumatic Brain Injury

Serious Injuries

Vehicle Accidents

Sinkhole Claims

- Auto Accidents
- Motorcycle Accidents
- Truck Accidents

Slip and Fall Accidents

Workers Compensation

Social Security Benefits

Wrongful Death

Spinal Cord Injuries

C. Attorney Biographies

A. ATTORNEY BIOGRAPHIES

RAYMOND F. AYRES



Raymond F. Ayres, II primarily handles claims involving personal injury, premises liability, workers' compensation, and Social Security Disability. Ray has practiced law for over 13 years and has extensive experience representing both plaintiffs/claimants and defendants in all types of injury claims. He has also represented claimants and defendants in appeals of workers' compensation claims and presented oral arguments to the First District Court of Appeal. This diverse experience helps him better prosecute injury claims; whether against an at-fault party, an employer, or to obtain disability benefits. Ray now devotes 100% of his practice to only representing the injured.

Ray was born and raised in Perry Hall, which is a small town in the suburbs of Baltimore, Maryland. He attended the University of South Florida and earned a Bachelor of Science degree in Finance. He continued his education at the University of Baltimore School of Law where he earned his Juris Doctor degree.

Ray is a member of The Florida Bar and admitted to practice in all Florida state courts as well as the U.S. District Court, Middle District of Florida. He is a member of the Workers' Compensation section of The Florida Bar. He is also a Certified Circuit Mediator with the Florida Supreme Court. Ray's email address is rayres@johnbales.com.

JOHN BALES



John Bales practices primarily in the areas of personal injury, insurance disputes, traumatic brain injuries, child injuries, employment, social security benefits, mass torts, construction, commercial, and professional liability matters. He has received numerous honors for his legal achievements, including an “AV” rating, the highest honor awarded by the *Martindale-Hubbell Law Directory*, which is based on the opinion of his professional peers. He is also certified by The Florida Bar as a specialist in Business Litigation Law. Certification is the highest level of recognition given by The Florida Bar for competency and experience within an area of law. John has been selected as a Florida “Super Lawyers,” honored in Florida Trend as one of Florida’s legal elite, and recognized by *Tampa Bay Magazine* as one of Tampa Bay’s Top Lawyers. He is a member of the Million Dollar Advocated Forum and the Multi-Million Dollar Advocates Forum.

He has lectured on various topics, including insurance coverage, personal injury, construction, litigation procedure, ethics, and professional liability for professional organizations, as well as for continuing education companies and national corporations. His courses have served as the training for understanding construction contracts and insurance policies.

John strives to enhance his profession and himself through participation in professional organizations. He is a member of the Hillsborough County Bar Association and has served as President, President Elect, Immediate Past President, and Treasurer, and in leadership roles as a member of the Board of Directors, Editor of the monthly Lawyer Magazine, Chair of the Justice Television Committee, Chair of the Bill of Rights Bicentennial Committee, Chair of the Speakers Committee, and a member of other committees. John is a member of The Florida Bar and served on the Standing Committee on Advertising as Vice Chair. He was a member of The Florida Bar Grievance Committee for the Thirteenth Judicial Circuit (13A) and ultimately became Chair of that committee. He acted as Chair of an arbitration panel on legal fee disputes for the Thirteenth Circuit Fee Arbitration Committee and is active with the Trial Lawyers Section. Additionally, he is a member of the St. Petersburg Bar Association, the Clearwater Bar Association, the American Bar Association, Trial Lawyers Section, and the Federal Bar Association. He is also a member of the Florida Justice Association (served on its Board of Directors) and the American Association for Justice. He has been a member of the Public Investors Arbitration Bar Association and the National Crime Victims Bar Association.

He is an active participant in the American Inns of Court, which has a mission of fostering excellence in professionalism, ethics, civility, and legal skills for judges, lawyers, academicians, and students of law in order to perfect the quality, availability, and efficiency of justice in the United States. He was elected to a national position as a Trustee of the American Inns of Court Foundation's Board of Trustees, and served as Treasurer and Executive Committee member. He was a Barrister with the Justice William Glenn Terrell Inn of Court. He is proud to have participated in organizing the Tampa Bay Inn of Court. He has served as its Secretary, Treasurer, Executive Director, and is a founding Master.

John is committed to serving his community. He currently serves on the Board of Trustees at the University of Florida Law Center and on the Board of Directors of the University of Florida Gator Boosters. He provides pro bono legal services through Bay Area Legal Services. He was a committee member of the Bay Area Legal Services Annual Fundraiser Cup of Hope. He was a member of the Hillsborough County Charter Review Committee, which reviewed and made recommendations about the County Charter. He is involved in the Hillsborough County Sheriff's Office Enrichment Grant Program. He served on the City of Tampa Variance Review Board as Chair and on the Tampa-Hillsborough Cable Advisory Committee. John was a participant in the Board of Directors of the Florida Bay Chapter of the March of Dimes Birth Defects Foundation and was Chair of the Executive Committee, the Board of Directors, the Recruiting Committee, the Long Range Planning Committee, and the Campaign Committee. He was a member of the Fund Raising Committee of the Gulf Ridge Counsel of the Boy Scouts of America. He was a member of the Board of Directors for the American Heart Association, Florida Affiliate, Inc. and was Chair of the inaugural Tampa Heart Walk, which was one of the most successful first year Heart Walks in the history of the American Heart Association. John also participated in the Leadership Tampa and Leadership Tampa Bay Programs. He has been a member of the Greater Tampa Chamber of Commerce, Leadership Tampa Alumni Association, Leadership Tampa Bay Alumni Association, United Way, Keel Club, and several social organizations.

John is a member of The Florida Bar and is admitted to (1) U. S. Supreme Court; (2) U. S. Court of Appeals, Eleventh Circuit (3) U. S. Court of Appeals, Federal Circuit; (4) U.S. District Court, Northern District Court of Florida; (5) U. S. District Court, Middle District of Florida; and (6) U.S. District Court, Southern District. He received his Bachelor of Science in Accounting, with honors, from the University of Florida and his Juris Doctor, with honors, from the University of Florida, where he was elected to Phi Eta Sigma and Phi Kappa Phi Honor Societies. John also was Vice Chair of the Justice Campbell Thornton National Moot Court Board and honored as an outstanding member. John's email address is jbales@JohnBales.com.

* * *

RANDOLPH M. GIDDINGS



Randy Giddings primarily handles claims involving personal injury and insurance coverage for accident cases including auto, bicycle, boating, brain injury, dog bite, drunk driving, motorcycle, pedestrian, slip and fall, tractor trailer, and wrongful death. He also handles claims related to employment law, insurance disputes, premises liability, sinkholes and Social Security Disability. With 16 years of experience, Randy also has significant legal experience in the areas of family law, criminal law, administrative law, contract disputes, contract negotiations, and environmental law.

Randy is a member of the Trial Lawyers section of the Florida Bar and the Capital City Justice Association of Tallahassee. He is also a member of the Family Law section of the Florida Bar, the Tallahassee Barristers, the Georgia Trial Lawyers Association, as well as a member of the Young Lawyers Division of the State Bar of Georgia.

Randy has a longstanding history of providing voluntary legal services including participating as a voluntary legal counsel to single fathers for the Fatherhood Initiative and serving as a voluntary member of the City of Tallahassee's Environmental Code Enforcement Board.

Randy was born in North Hampton, Massachusetts and later came to Florida. He has a Bachelor of Mechanical Engineering degree from Cleveland State University and received his Masters degree in Business Administration from the University of Texas at Austin. Randy graduated from Mercer University's School of Law in Macon, Georgia and was admitted to the Florida Bar and to the Georgia Bar. Randy is admitted to practice in all state courts in Florida and Georgia and has represented clients throughout North Florida and South Georgia. Randy is also admitted to practice in the United States District Court for the Northern District of Florida. Randy's email address is rgiddings@johnbales.com.

* * *

ROBERT W. HALEY



Robert Haley practices primarily in the area of personal injury, as well as insurance coverage for accident cases including auto, bicycle, dog bite, drunk driving, motorcycle, wrongful death and premises liability. Rob is committed to the firm's belief that life doesn't wait. He is dedicated to moving the process forward quickly and efficiently on behalf of clients throughout the state of Florida who have been injured by the negligence of others.

After graduating from Bowling Green State University, *cum laude*, with a Bachelor of Science in Education, specializing in Political Science, he earned his Juris Doctor from the University of Toledo, College of Law. While in law school, he served as Chairman of the University's Moot Court Board and was named a Fellow with the Chief Justice Moyer Foundation based on his research connecting legal education programs to youth in underserved communities.

Rob is a member of the Florida Bar and Hillsborough County Bar Association. You can email him directly at rhaley@johnbales.com.

* * *

MATTHEW JACOBS



Matthew Jacobs practices primarily in the areas of employment law, insurance coverage disputes, and mass torts.

He graduated *magna cum laude* from the University of South Florida with a Bachelor of Arts in political science and a minor in environmental science and policy. He received his Juris Doctor from the University of Maryland Francis King Carey School of Law. While in law school, he was a member of the Labor and Employment Trial Advocacy Team and

served as a mediator with the Mediation Clinic.

Born in Michigan and raised in Kissimmee, Florida, Matt is a member of The Florida Bar, St. Petersburg Bar Association, and Hillsborough County Bar Association. Matthew's email is mjacobs@JohnBales.com.

* * *

RACHEL W. LEACH



Rachel Leach is a member of the firm's Trial Department. She practices primarily in the areas of nursing home abuse and neglect and medical malpractice. Rachel is a native of Tampa, Florida. She graduated from the University of Tampa with a Bachelor of Science in Psychology and received her Juris Doctor from the William S. Richardson School of Law in Honolulu, HI. During law school, Rachel worked for Trial Defense of the Judge Advocate General Corps at Schofield Barracks, Hawaii. Prior to moving

back to Florida, Rachel represented personal injury plaintiffs for over six years in Texas.

Rachel is admitted to The Florida Bar and The State Bar of Texas. She is also a member of the American Bar Association and the Texas Trial Lawyers Association. Rachel's email is rleach@JohnBales.com.

* * *

D. JAMES MILES



James "Jim" Miles is the managing partner of the firm's Pretrial Department. He practices primarily in the areas of personal injury and insurance coverage for accident cases including auto, bicycle, boating, brain injury, dog bite, drunk driving, motorcycle, pedestrian, slip and fall, tractor trailer, and wrongful death. He also handles claims related to employment law, insurance disputes, premises liability, sinkholes and Social Security Disability.

Jim is a member of The Florida Bar. He has more than 41 years of personal injury and insurance coverage experience. He was in first-party insurance claims management for 11 years and was responsible for millions of dollars in claims. He also spent 14 years handling plaintiff injury claims and 9 years handling first-party personal injury protection (PIP) litigation claims. Jim ran his own law firm before joining John Bales Attorneys.

A New Jersey native, Jim received his Bachelor of Science from the University of Tampa and Juris Doctor from Florida A&M University, College of Law. Jim's email address is jmiles@JohnBales.com.

* * *

JAMES M. RAGANO



James Ragano primarily handles claims involving personal injury, negligence, premises liability, nursing home negligence, medical malpractice, insurance disputes, and unpaid wage and hour disputes. Accident cases include auto, bicycle, boating, brain injury, dog bite, drunk driving, motorcycle, pedestrian, slip and fall, tractor trailer, and wrongful death. In recognition of his legal accomplishments and his community involvement, James has been voted Florida's Legal Elite and is a frequent risk management lecturer for his clients and peers.

James has practiced law for over 19 years. He has extensive experience in injury law for both plaintiff and defendant. This helps him better understand how to litigate a case for a person that has been injured because of someone else's negligence. Prior to joining the firm, James had his own law firm in the Tampa Bay area for 6 years, focusing his practice on complex civil litigation matters throughout the Southeastern United States through trial, post-trial motions, and appeals.

He is a member of The Florida Bar, The Georgia Bar, and The Mississippi Bar. James is admitted to practice in the U.S. Court of Appeals for the Fifth Circuit and U.S. District Court, Middle District of Florida; U.S. District Court, Middle District of Georgia; U.S. District Court, Northern District of Georgia; U.S. District Court, Southern District of Georgia; U.S. District Court, Northern District of Mississippi; and the U.S. District Court, Southern District of Mississippi. He is a member of the Hillsborough County Bar Association and the Clearwater Bar Association. James received his Bachelor of Science degree from Boston College and graduated from The Catholic University of America, Columbus School of Law in Washington, D.C. He was born and raised in California and moved to Florida after finishing law school.

James has served on various community boards and he has a long history of involvement in local youth sports. He is currently the Middle School JV Boys Basketball Coach at the Academy of the Holy Names in Tampa, Florida. James' email address is jragano@JohnBales.com

* * *

ASHLEIGH R. SHELVER



Ashleigh R. Shelver is a member of the firm's trial team and practices primarily in the areas of insurance coverage disputes, mass torts, and employment law.

Ashleigh was born and raised in Palm Coast, Florida. She graduated from the University of Central Florida with a Bachelor of Arts in Political Science and a Bachelor of Arts in Legal Studies. Ashleigh received her Juris Doctor from the University of Florida Levin College of Law.

Ashleigh is a member of The Florida Bar and Hillsborough County Bar Association. Ashleigh was a member of several law student organizations including the Florida Journal of International Law, where she served as the Student Works Editor. Ashleigh was also published in the Fall 2014 edition of the Florida Journal of International Law. Ashleigh's email address is ashelver@johnbales.com.

* * *

APPENDIX

A. *Appendix A: Service Agreement, Rev. 11/2014*

PUBLIC INSURANCE ADJUSTER SERVICES AGREEMENT

POLICYHOLDER

Full Name(s):		Email:		Website:	
Address:	City:	County:	State:	Zip:	
Phone: ()	Fax: ()		Cell: ()		

PUBLIC INSURANCE ADJUSTER

Full Name:			License No.		
Permanent Business Address:	City:	County:	State:	Zip:	
Phone: ()	Fax: ()	Email:	Website:		
Public Adjuster Firm Name		Claim Type (Emergency, Non-Emergency, Supplemental)			

LOSS

Loss Address:	City:	County:	State:	Zip:
Date of Loss:	Description of Loss:	Did Loss Occur During a State of Emergency? Yes / No		

INSURANCE COMPANY

Name # 1:	Policy/Claim No.
Name # 2:	Policy/Claim No.

The above referenced Policyholder(s) (collectively referred to as "POLICYHOLDER") and Public Insurance Adjuster("PUBLIC ADJUSTER") (collectively referred to as "PARTIES") enter into this Public Insurance Adjuster Services Agreement (this "Agreement") for the following described services (the "Services") relating to the above referenced loss (the "LOSS"), pursuant to the following terms and conditions, which are incorporated herein for all purposes:

1. SERVICES: PUBLIC ADJUSTER will act as a public insurance adjuster on behalf of POLICYHOLDER for the services provided and fees will be paid upon the preparation and/or presentment of the claim for loss, damage, and recovery for the LOSS under any insurance policies including those listed above relating to the following insurance coverage provided in the policy(ies). This does not include assisting in any appraisal/mediation/arbitration or legal proceedings whether contractual or extra contractual. Other:

2. NOTICE OF PUBLIC INSURANCE ADJUSTER SERVICES AND OF ASSIGNMENT: POLICYHOLDER further agrees and confirms that a portion of the recovery from any insurance company has been assigned by POLICYHOLDER to ADJUSTER. Accordingly, POLICYHOLDER has instructed and hereby instructs all insurance companies and authorizes PUBLIC ADJUSTER to direct all insurance companies to make POLICYHOLDER and PUBLIC ADJUSTER co-payees on any payments, checks, and/or drafts prepared by insurance companies for claims relating to this Agreement. POLICYHOLDER also has instructed and hereby instructs all insurance companies and authorizes PUBLIC ADJUSTER to direct that all communications, correspondence, checks, and/or drafts be addressed and sent to PUBLIC ADJUSTER with a copy of all communications, correspondence, drafts, and checks sent to the

POLICYHOLDER. All risk and/or damage inspections are to be coordinated with and through PUBLIC ADJUSTER.

POLICYHOLDER has instructed and hereby instructs all insurance companies and authorizes PUBLIC ADJUSTER to direct all insurance companies to provide PUBLIC ADJUSTER/POLICYHOLDER with the following within ten (10) days from notice for each policy of insurance (including, but not limited to, coverage forms, amendatory endorsements, and/or exclusions) that may in any way provide coverage for the LOSS: (1) a certified copy of each of the policy(ies), including declaration page and any applicable exclusions, endorsements, etc.; (2) the type and limits of the coverages afforded by each policy; and (3) a statement of any policy or coverage defense that insurer reasonably believes is available to such insurer at the time of filing such statement for each policy. It is requested that the insurance company assure that all policy provisions are complied with in processing POLICYHOLDER's claim. Please note that it is POLICYHOLDER's intention to make a claim for loss and/or damage relating to any replacement cost provisions of the policy of insurance. Further, the insurance company must immediately send to PUBLIC ADJUSTER and POLICYHOLDER any additional or supplemental documentation or information that may be discovered in the future relating to this request.

3. CANCELLATION OF AGREEMENT: POLICYHOLDER may cancel this Agreement without penalty or obligation within three (3) business days after the date on which this Agreement is executed, as shown below, or within three (3) business days after the date on which POLICYHOLDER or PUBLIC ADJUSTER has notified any insurance company of the claim, by phone or in writing, whichever is later. The notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof of mailing thereof to the PUBLIC ADJUSTER at the address specified above. During any state of emergency, as declared by the Governor and for a period of one (1) year after the date of loss, POLICYHOLDER shall have five (5) business days after the date on which this Agreement is executed to cancel this Agreement. If during the pendency of this Agreement PUBLIC ADJUSTER determines within its sole discretion that POLICYHOLDER can no longer be represented for any reason, PUBLIC ADJUSTER may withdraw from further representation

4. FEES FOR SERVICES: POLICYHOLDER understands and agrees that PUBLIC ADJUSTER shall recover its fees based on the amount recovered from an insurance company for the LOSS including, but not limited to, compromise, confession of liability, appraisal awards, judgments, awards and/or settlements of damages, costs, interest, fees, and/or payments of POLICYHOLDER's liens, bills, or claims. PUBLIC ADJUSTER's fee shall be immediately due and payable upon insurance company making any payment. The fee calculation shall be computed before costs are subtracted from the total amount recovered. The amount of the PUBLIC ADJUSTER's fees shall be computed as follows:

_____ percent of the amount of claim payments by any insurance company for the LOSS or
_____ percent of the amount of any new claim payments in excess of \$ _____
considered as sums due/paid for damages determined by any insurance company for the LOSS. Ten percent of the amount of claim payments by any insurance company for the LOSS, if the claim is based on events that are the subject of a declaration of a state of emergency by the Governor and the claims are made during the period of 1 year after the declaration of emergency. POLICYHOLDER and PUBLIC ADJUSTER understand and agree that the percentages provided in this Agreement comply with Florida law in effect as of the date of this Agreement. If the provision of any state or federal rule or statute requires payment of fees in a lesser amount than those set forth above, then POLICYHOLDER and PUBLIC ADJUSTER understand that POLICYHOLDER will be charged only the lesser amount provided for _____ in _____ said _____ rule _____ or _____ statute. _____ Other: _____

5. EXPENSES/COSTS: POLICYHOLDER understands and agrees that POLICYHOLDER is responsible for all costs and expenses incurred for the preparation and/or presentment of the claim for loss, damage, and recovery for the LOSS. If POLICYHOLDER authorizes in writing PUBLIC ADJUSTER to pay on POLICYHOLDER's behalf such costs and expenses the PUBLIC ADJUSTER deems necessary from time to time to investigate, prepare a claim, settle a claim, and/or take other action the ADJUSTER deems necessary to pursue POLICYHOLDER's claim, POLICYHOLDER understands such costs and expenses advanced by PUBLIC ADJUSTER on POLICYHOLDER's behalf are payable to PUBLIC ADJUSTER and shall be deducted from any recovery after fees for services are computed and paid to PUBLIC

ADJUSTER. If there is any recovery, whether during the time of service by PUBLIC ADJUSTER, service by another public insurance adjuster, representation by an attorney, or without services provided by an adjuster or attorney, PUBLIC ADJUSTER will be entitled to recovery of all reasonable fees and expenses/costs expended in the processing of POLICYHOLDER's claim. POLICYHOLDER understands that if POLICYHOLDER elects to terminate PUBLIC ADJUSTER, POLICYHOLDER shall immediately pay PUBLIC ADJUSTER all costs and expenses of PUBLIC ADJUSTER and shall remain responsible for all fees for services rendered pursuant to this Agreement and PUBLIC ADJUSTER may have a lien or a claim for quantum meruit on any recovery from this claim.

6. LETTER OF PROTECTION: POLICYHOLDER understands and agrees that if it becomes necessary to retain an attorney, POLICYHOLDER authorizes and agrees to a Letter of Protection for the PUBLIC ADJUSTER. POLICYHOLDER shall direct POLICYHOLDER'S attorney to prepare a Letter of Protection, which is a legally binding document signed by the PARTIES and the attorney, that directs POLICYHOLDER's attorney to pay the fees and costs due under this Agreement from any recovery by POLICYHOLDER for the LOSS.

7. PROVISIONS CONCERNING SERVICES: POLICYHOLDER and PUBLIC ADJUSTER understand and agree that neither party shall settle any claims arising out of the LOSS without first obtaining the consent of the other. POLICYHOLDER's deposit or negotiation of a claim payment is evidence of POLICYHOLDER's consent to settlement. POLICYHOLDER agrees to cooperate with PUBLIC ADJUSTER, to be available for preparation of the claim, conferences, appraisal, and/or mediation, and to keep PUBLIC ADJUSTER fully informed of all matters relating to this LOSS. POLICYHOLDER acknowledges that PUBLIC ADJUSTER has made no guarantees regarding the disposition or results of any stage of the claims process, and all expressions made on behalf of PUBLIC ADJUSTER are the opinion of PUBLIC ADJUSTER based on information known at that time. This Agreement provides the complete and only agreement between POLICYHOLDER and PUBLIC ADJUSTER with respect to the above referenced LOSS, and supersedes all prior written and oral offers, proposals, and agreements. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing. In the event a dispute between the parties arises and suit is filed, the venue of such suit shall be in the County in Florida where PUBLIC ADJUSTER's above address is located. The substantive law of the State of Florida shall govern this Agreement. Any failure by either party to comply with any provision of this Agreement may be waived, but only if such waiver is in writing and signed by the other party. Any failure to insist upon or enforce compliance with any provision of this Agreement shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if hand delivered, sent by Federal Express or similar overnight carrier, or sent by registered or certified United States Mail, return receipt requested, to the addresses set forth in this Agreement, or to such other address as a party may designate in accordance with this provision, unless specified otherwise for a particular provision in this Agreement. This Agreement shall not be construed more strictly against PUBLIC ADJUSTER simply because it was the party responsible for preparing this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument. A copy of this Agreement transmitted by telefacsimile, email, and/or other electronic form shall be deemed an original.

8. NO LEGAL SERVICES PROVIDED: This Agreement is not for legal services and PUBLIC ADJUSTER cannot provide legal services. Any legal services must be provided by an attorney. POLICYHOLDER understands and agrees that POLICYHOLDER will need to enter into a separate written agreement with an attorney of his/her choice and make separate payment for such services provided for representation. PUBLIC ADJUSTER encourages POLICYHOLDER to seek appropriate legal services if necessary. Upon request, PUBLIC ADJUSTER may provide names of attorneys that other policyholders have retained and indicated provided satisfy services. If none of the attorneys named are satisfactory to POLICYHOLDER, PUBLIC ADJUSTER may be able to provide additional names. POLICYHOLDER should always seek legal representation from the attorney of his/her choice.

9. STATEMENT OF CLAIM: POLICYHOLDER understands and acknowledges that pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third

degree, punishable as provided in s. 775.082, s. 775.803, or s. 775.084, Florida Statutes. POLICYHOLDER shall confirm the accuracy and completeness of any and all information and documentation provided to PUBLIC ADJUSTER and any and all forms or other documents signed and/or provided to the insurance company for purposes of adjusting through the preparation and submission of a claim for loss, damage, and recovery under any insurance policy.

10. ATTACHMENTS: There ☐ are ☐ are not (initial one) attachments to this Agreement.

11. POLICYHOLDER'S EXCEPTIONS, CHANGES, INPUT OR MODIFICATIONS TO THIS AGREEMENT:

There ☐ are the following ☐ are not (initial one) Policyholder revisions to this Agreement.

POLICYHOLDER is signing this Agreement on POLICYHOLDER's own behalf and in any representative capacity appropriate to the circumstances. By executing below, POLICYHOLDER specifically agrees to be bound by this Agreement, including the provisions set out above and on the back of this Agreement, which are incorporated herein for all purposes. POLICYHOLDER hereby acknowledges receipt of a copy of this Agreement and that the Adjuster that solicited this Agreement has signed below.

Date: _____

By: _____
Signature of POLICYHOLDER

Print Name of POLICYHOLDER

Date: _____

By: _____
Signature of POLICYHOLDER

Print Name of POLICYHOLDER

Date: _____

By: _____
Signature of PUBLIC ADJUSTER

Print Name of PUBLIC ADJUSTER

B. Appendix B: Affidavit - Authority to Sign For Unavailable Claimants, Rev. 11/2014

AUTHORITY TO SIGN FOR UNAVAILABLE CLAIMANT					
POLICYHOLDER					
Full Name(s):		Email:		Website:	
Address:		City:	County:	State:	Zip:
Phone: ()		Fax: ()		Cell: ()	
PUBLIC INSURANCE ADJUSTER					
Full Name:			License No.		
Permanent Business Address:		City:	County:	State:	Zip:
Phone: ()		Fax: ()	Email:		Website:
Public Adjuster Firm Name			Claim Type (Emergency, Non-Emergency, Supplemental)		
LOSS					
Loss Address:		City:	County:	State:	Zip:
Date of Loss:	Description of Loss:				
INSURANCE COMPANY					
Name # 1:			Policy/Claim No.		
Name # 2:			Policy/Claim No.		

STATE OF FLORIDA

COUNTY OF _____

Before me this day personally appeared _____, ("Insured") who, being duly sworn, deposes and says the following:

1. Insured acknowledges, understands, and agrees that under section 626.8796, Florida Statutes, an agreement with a public adjuster must be signed by all named insureds. Section 626.8796 states in part that "[i]f all named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds."

2. Based on the above, Insured attests that the named insureds on the relevant policy of insurance are as follows:

- a. _____
- b. _____

3. Insured attests that in entering into the Public Adjuster Service Agreement dated _____ with _____, Insured had authority to enter in the contract and settle all claims on behalf of all named insureds.

Further affiant sayeth not.

Dated: _____, 20____.

Signature

The foregoing instrument was acknowledged before me on _____, 20____, by
_____, who is personally known to me or who has produced
_____ as identification.

Print, Type or Stamp Name
Notary Public, State of Florida