

Fighting Fraud in Sinkhole Claims



**Florida Insurance Fraud Education Committee Conference
June 14, 2012**

INTRODUCTIONS

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OVERVIEW

This presentation will focus on the changes in Senate Bill 408 which passed on May 17, 2011 and how they can be best utilized in claims handling and litigation.

Our goal is to provide a nuts and bolts approach to current changes in the law and to highlight fraud fighting measures.



What is a sinkhole?



“Sinkhole” means a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved. F.S. §627.706(2)(h)

What is not a sinkhole?

- **Shrink Swell Clays** - certain types of clay have characteristics of shrinking and swelling. When saturated with water, the clays swell up, possibly causing the soils and structures above them to shift slightly upward. When dry, the clays shrink in mass or volume, perhaps causing some settlement or downward migration of above soils.
- **Settlement and compaction of loose near surface soils** - Homes, and the concrete slab on which they are often built, are heavy. Over time, if the soil homes are built upon has not been previously and properly compacted, the weight of the home may compress and compact the soils, causing the home to settle or sink into the ground, which may cause damage to the home. Although settling, this compaction process may not be related to sinkhole activity.

What is not a sinkhole?

- **Vegetation** Many trees and shrubs have considerable root systems that may lift and damage a structure. Careful inspection to the structure must be made to determine whether the damage is actually from sinking or has another part of the structure just been lifted. In addition, these roots may desiccate shrink-swell clays causing settlement as well as swell up when they happen to be saturated with water (i.e.: for instance a water leak in the vicinity of the structure wall and tree). Effects of a large tree root system can be devastating to a structure or foundation.
- **Change in Groundwater Level** As groundwater levels move downward due to fluctuations in rainfall and/or pumping from wells, as well as tidal influence, internal soil stresses increase due to the loss of buoyancy. This additional stress may cause both uniform and differential settlement. Migration of soils can be common near waterways.

What is not a sinkhole?

- **Material Shrinkage** –Cracking and settling can result from material shrinkage and thermal expansion of housing materials.
- **Buried Debris** This is usually caused by the builder of the property burying materials in the yard or under the slab of the property. While sinkholes have mostly have a circular shape to them, buried debris (or trash pits) are usually oblong in form as builders or dumpers tend to excavate a trench in order to dispose of their materials. This type of feature is typically no more than 4 feet in depth.

What is not a sinkhole?

- **Organic soils** - Organics, or organic soils, is a term used to describe soils containing layers of materials that are likely to decompose over time - things like dead tree roots, leaves, mulch, wood, etc. It is possible that, during home construction, fill soil was used that may contain organic materials, and over time as this organic material decomposed and decays, the soils above it are pulled downward.
- **Septic Tank Collapse** - Some homes with septic tanks may experience damage, both to the home and to the yard, if the septic tank collapses or is breached.

When Are Sinkholes Covered?

Since 2005, under the statutory definition, a

Sinkhole Loss requires both:

Sinkhole Activity

and

Structural Damage caused by a Sinkhole

Before 2005 the law defined Sinkhole Loss as only requiring Physical Damage to the property.

When Are Sinkholes Covered?

“Sinkhole activity” means settlement or systematic weakening of the earth supporting the covered building only if the settlement or systematic weakening results from contemporaneous movement or raveling of soils, sediments, or rock materials into subterranean voids created by the effect of water on a limestone or similar rock formation. F.S. §627.706(2)(i)

“Sinkhole loss” means structural damage to the covered building, including the foundation, caused by sinkhole activity. Contents coverage and additional living expenses apply only if there is structural damage to the covered building caused by sinkhole activity. F.S. §627.706(2)(j)

When Are Sinkholes Covered?

What Does the Policy Language Say?

- * Actual Physical Damage
- * Structural Damage



When Are Sinkholes Covered?

THE MILLION DOLLAR QUESTION



What is Structural Damage ?

What is Structural Damage?

Damage that impairs the structural integrity of a building?

OR

Damage to a Structure?



What is Structural Damage?

- Arguments were made for both definitions



- Some courts ruled technical definition applied (load bearing)
- Others stated that the fact that it could be defined both ways meant that the broader coverage applied (cracks to building)

WHY SB 408 WAS PASSED

For the past 10 years Florida has seen a sharp uptick in the number of sinkhole claims reported to insurance companies, which in turn has detrimentally impacted the value of real estate in an already depressed market. Sinkholes occur because of the unique geological composition endemic to certain regions of Florida.

The number of sinkhole claims continued to increase drastically after the enactment of the 2005 amendments, in part because the term “structural damage” was not specifically defined.



WHY SB 408 WAS PASSED

This led to homeowners making sinkhole claims for cosmetic damage that did not affect the structural integrity of their home, a result that was never intended by the Legislature.

The continued increase in sinkhole claims resulted in enormous and unsustainable losses for insurance companies, and declining property values.



Impact on Citizens' Claims

The number of sinkhole claims increased so dramatically that, “for Citizens Property Insurance Corporation (“Citizens”), the largest property insurer in the state, the claims frequency ratio more than doubled between 2006 and 2009.” Senate Report, p. 1.

During this same period, in the so-called “sinkhole alley” counties of Hernando, Pasco and Hillsborough, claims received by Citizens have increased by 375%, 187%, and 384% respectively. Senate Report, p. 1.

“In 2009, Citizens incurred over \$84 million in sinkhole losses plus adjustment expenses, yet obtained only \$19.6 million in earned premium to cover those costs.” Senate Report, p. 1.

Citizens' losses represent almost four times the amount of premium collected for sinkhole coverage. *Id.* This problem was exacerbated by the fact that Citizens' rates are capped and cannot be increased by more than about 10% per year. Senate Report, p. 1.

Impact for Private Insurers

According to data provided by the Office of Insurer Regulation “OIR”, between 2006 and 2010, 24,671 claims were reported to private insurers.

The number of claims increased from 2,360 in 2006 to 7,244 in 2009. *Report on Review of the 2010 Sinkhole Data Call (“OIR Data Call”), p. 13.*

Total sinkhole claim costs for these insurers totaled approximately \$1.4 billion between 2006 and 2010. Senate Report, p. 2.

Between 2006 and 2009, insurers saw a 207% increase in the total number of sinkhole claims reported. *OIR Data Call, p. 13.*

Easy Money

- OIR reported that fees paid to trial lawyers and public adjusters exceeded \$21 million between 2006 and 2009.
- This cottage industry is driving the costs of insurance higher and higher. And it's only going to get worse.
- The number of licensed public adjusters in Florida increased 330 percent, growing from 678 to 2,914 from 2003 to 2009.

Significant Changes to Existing Sinkhole Law

SB 408 materially altered previous sinkhole statutes in three keys areas:

1. Clarified definition of structural damage.
2. Time limitations on when sinkhole claims can be reported.
3. Implemented measures that effectively remove the financial incentive to pursue false or questionable sinkhole claims by insureds, public adjusters, and plaintiff's attorneys.

Changes to Definition of Structural Damage

F.S. 627.706(2)(k)

3096 (k) "Structural damage" means a covered building,
3097 regardless of the date of its construction, has experienced the
3098 following:

3099 1. Interior floor displacement or deflection in excess of
3100 acceptable variances as defined in ACI 117-90 or the Florida
3101 Building Code, which results in settlement related damage to the
3102 interior such that the interior building structure or members
3103 become unfit for service or represents a safety hazard as
3104 defined within the Florida Building Code;

3105 2. Foundation displacement or deflection in excess of
3106 acceptable variances as defined in ACI 318-95 or the Florida
3107 Building Code, which results in settlement related damage to the
3108 primary structural members or primary structural systems that
3109 prevents those members or systems from supporting the loads and
3110 forces they were designed to support to the extent that stresses
3111 in those primary structural members or primary structural
3112 systems exceeds one and one-third the nominal strength allowed
3113 under the Florida Building Code for new buildings of similar
3114 structure, purpose, or location;

Changes to Definition of Structural Damage

F.S. 627.706(2)(k)

3115 3. Damage that results in listing, leaning, or buckling of
3116 the exterior load bearing walls or other vertical primary
3117 structural members to such an extent that a plumb line passing
3118 through the center of gravity does not fall inside the middle
3119 one-third of the base as defined within the Florida Building
3120 Code;

3121 4. Damage that results in the building, or any portion of
3122 the building containing primary structural members or primary
3123 structural systems, being significantly likely to imminently
3124 collapse because of the movement or instability of the ground
3125 within the influence zone of the supporting ground within the
3126 sheer plane necessary for the purpose of supporting such
3127 building as defined within the Florida Building Code; or

3128 5. Damage occurring on or after October 15, 2005, that
3129 qualifies as "substantial structural damage" as defined in the
3130 Florida Building Code.

Changes to the Time Limitations Period to Report a Sinkhole Claim

F.S. 627.706(5)

3177 (5) Any claim, including, but not limited to, initial,
3178 supplemental, and reopened claims under an insurance policy that
3179 provides sinkhole coverage is barred unless notice of the claim
3180 was given to the insurer in accordance with the terms of the
3181 policy within 2 years after the policyholder knew or reasonably
3182 should have known about the sinkhole loss.

Changes in the Investigation & Adjustment of Sinkhole Claims

F.S. 627.707(1)

3193 627.707 ~~Standards for~~ Investigation of sinkhole claims ~~by~~
3194 ~~insurers; insurer payment; nonrenewals.~~—Upon receipt of a claim
3195 for a sinkhole loss to a covered building, an insurer must meet
3196 the following standards in investigating a claim:

3197 (1) The insurer must inspect ~~make an inspection of~~ the
3198 policyholder's insured's premises to determine if there is
3199 structural ~~has been physical~~ damage that ~~to the structure which~~
3200 may be the result of sinkhole activity.

Changes in the Investigation & Adjustment of Sinkhole Claims

F.S. 627.707(2)

3201 (2) If the insurer confirms that structural damage exists
3202 but is unable to identify a valid cause of such damage or
3203 discovers that such damage is consistent with sinkhole loss
3204 ~~Following the insurer's initial inspection,~~ the insurer shall
3205 engage a professional engineer or a professional geologist to
3206 conduct testing as provided in s. 627.7072 to determine the
3207 cause of the loss within a reasonable professional probability
3208 and issue a report as provided in s. 627.7073, only if sinkhole
3209 loss is covered under the policy. Except as provided in
3210 subsections (4) and (6), the fees and costs of the professional
3211 engineer or professional geologist shall be paid by the
3212 insurer.÷

3213 ~~(a) The insurer is unable to identify a valid cause of the~~
3214 ~~damage or discovers damage to the structure which is consistent~~
3215 ~~with sinkhole loss; or~~

3216 ~~(b) The policyholder demands testing in accordance with~~
3217 ~~this section or s. 627.7072.~~

Changes in Policyholder's Obligations in Sinkhole Claims

F.S. 627.707(4)

3233 (4) (a) If the insurer determines that there is no sinkhole
3234 loss, the insurer may deny the claim.

3235 (b) If coverage for sinkhole loss is available and ~~if~~ the
3236 insurer denies the claim, ~~without performing testing under s.~~
3237 627.7072, the policyholder may demand testing by the insurer
3238 under s. 627.7072.

3239 1. The policyholder's demand for testing must be
3240 communicated to the insurer in writing within 60 days after the
3241 policyholder's receipt of the insurer's denial of the claim.

3242 2. The policyholder shall pay 50 percent of the actual
3243 costs of the analyses and services provided under ss. 627.7072
3244 and 627.7073 or \$2,500, whichever is less.

3245 3. The insurer shall reimburse the policyholder for the
3246 costs if the insurer's engineer or geologist provides written
3247 certification pursuant to s. 627.7073 that there is sinkhole
3248 loss.

Changes in Policyholder's Obligations in Sinkhole Claims

F.S. 627.707(5)

3249 ~~(5)(a) Subject to paragraph (b),~~ If a sinkhole loss is
3250 verified, the insurer shall pay to stabilize the land and
3251 building and repair the foundation in accordance with the
3252 recommendations of the professional engineer retained pursuant
3253 to subsection (2), as provided under s. 627.7073, and in
3254 ~~consultation~~ with notice to the policyholder, subject to the
3255 coverage and terms of the policy. The insurer shall pay for
3256 other repairs to the structure and contents in accordance with
3257 the terms of the policy. If a covered building suffers a
3258 sinkhole loss or a catastrophic ground cover collapse, the
3259 insured must repair such damage or loss in accordance with the
3260 insurer's professional engineer's recommended repairs. However,
3261 if the insurer's professional engineer determines that the
3262 repair cannot be completed within policy limits, the insurer
3263 must pay to complete the repairs recommended by the insurer's
3264 professional engineer or tender the policy limits to the
3265 policyholder.

Changes in Policyholder's Obligations in Sinkhole Claims

F.S. 627.707(5)(b)

3274 (b) In order to prevent additional damage to the building
3275 or structure, the policyholder must enter into a contract for
3276 the performance of building stabilization and foundation repairs
3277 within 90 days after the insurance company confirms coverage for
3278 the sinkhole loss and notifies the policyholder of such
3279 confirmation. This time period is tolled if either party invokes
3280 the neutral evaluation process, and begins again 10 days after
3281 the conclusion of the neutral evaluation process.

Changes in Policyholder's Obligations in Sinkhole Claims

F.S. 627.707(5)(c)

3282 (c) After the policyholder enters into the contract for the
3283 performance of building stabilization and foundation repairs,
3284 the insurer shall pay the amounts necessary to begin and perform
3285 such repairs as the work is performed and the expenses are
3286 incurred. The insurer may not require the policyholder to
3287 advance payment for such repairs. If repair covered by a
3288 personal lines residential property insurance policy has begun
3289 and the professional engineer selected or approved by the
3290 insurer determines that the repair cannot be completed within
3291 the policy limits, the insurer must ~~either~~ complete the
3292 professional engineer's recommended repair or tender the policy
3293 limits to the policyholder without a reduction for the repair
3294 expenses incurred.

SB 408's Repair Provisions and Sinkhole Scams

The problem: Homeowner's didn't repair sinkhole damage.

-- "HomeWise "Preferred Insurance Co. examined 55 claims and found that 79% of owners represented by an attorney or adjuster did not repair their homes. Almost 60% paid off their mortgage or sold the house."

-- "One insurance company examined 53 sinkhole claims and found only five homeowners completed repairs. Seven of the nonrepaired homes were sold, meaning if there were problems, they simply were passed on."

Source: Orlando Sentinel, January 31, 2011.

Changes in Policyholder's Obligations in Sinkhole Claims to Ensure Repairs are Performed

F.S. 627.707(5)(d)

3295 (d) The stabilization and all other repairs to the
3296 structure and contents must be completed within 12 months after
3297 entering into the contract for repairs described in paragraph
3298 (b) unless:
3299 1. There is a mutual agreement between the insurer and the
3300 policyholder;
3301 2. The claim is involved with the neutral evaluation
3302 process;
3303 3. The claim is in litigation; or
3304 4. The claim is under appraisal or mediation.

Changes in Policyholder's Obligations in Sinkhole Claims

F.S. 627.7073(2)(b)

3417 (b) As a precondition to accepting payment for a sinkhole
3418 loss, the policyholder must file a copy of any sinkhole report
3419 regarding the insured property which was prepared on behalf or
3420 at the request of the policyholder. The policyholder shall bear
3421 the cost of filing and recording the sinkhole report. The
3422 recording of the report does not:

3423 1. Constitute a lien, encumbrance, or restriction on the
3424 title to the real property or constitute a defect in the title
3425 to the real property;

3426 2. Create any cause of action or liability against any
3427 grantor of the real property for breach of any warranty of good
3428 title or warranty against encumbrances; or

3429 3. Create any cause of action or liability against a title
3430 insurer that insures the title to the real property.

3431 (c) ~~(b)~~ The seller of real property upon which a sinkhole
3432 claim has been made by the seller and paid by the insurer must
3433 ~~shall~~ disclose to the buyer of such property, before the
3434 closing, that a claim has been paid and whether or not the full
3435 amount of the proceeds were used to repair the sinkhole damage.

Changes in Policyholder's Obligations in Sinkhole Claims

F.S. 627.7073(3)

3436 (3) Upon completion of any building stabilization or
3437 foundation repairs for a verified sinkhole loss, the
3438 professional engineer responsible for monitoring the repairs
3439 shall issue a report to the property owner which specifies what
3440 repairs have been performed and certifies within a reasonable
3441 degree of professional probability that such repairs have been
3442 properly performed. The professional engineer issuing the report
3443 shall file a copy of the report and certification, which
3444 includes a legal description of the real property and the name
3445 of the property owner, with the county clerk of the court, who
3446 shall record the report and certification. This subsection does
3447 not create liability for an insurer based on any representation
3448 or certification by a professional engineer related to the
3449 stabilization or foundation repairs for the verified sinkhole
3450 loss.

Criminal Penalties Added for a Policyholder Accepting Rebates for Repairs F.S. 627.707(5)(e)

3305 (e) ~~(e)~~ Upon the insurer's obtaining the written approval of
3306 ~~the policyholder and~~ any lienholder, the insurer may make
3307 payment directly to the persons selected by the policyholder to
3308 perform the land and building stabilization and foundation
3309 repairs. The decision by the insurer to make payment to such
3310 persons does not hold the insurer liable for the work performed.
3311 The policyholder may not accept a rebate from any person
3312 performing the repairs specified in this section. If a
3313 policyholder does receive a rebate, coverage is void and the
3314 policyholder must refund the amount of the rebate to the
3315 insurer. Any person making the repairs specified in this section
3316 who offers a rebate commits insurance fraud punishable as a
3317 third degree felony as provided in s. 775.082, s. 775.083, or s.
3318 775.084.

SB 408 Addressed Public Adjusters' Deceptive Solicitation Practices

F.S. 626.854(8)(a)

596 (a) The following statements, made in any public adjuster's
597 advertisement or solicitation, are considered deceptive or
598 misleading:

599 1. A statement or representation that invites an insured
600 policyholder to submit a claim when the policyholder does not
601 have covered damage to insured property.

602 2. A statement or representation that invites an insured
603 policyholder to submit a claim by offering monetary or other
604 valuable inducement.

605 3. A statement or representation that invites an insured
606 policyholder to submit a claim by stating that there is "no
607 risk" to the policyholder by submitting such claim.

608 4. A statement or representation, or use of a logo or
609 shield, that implies or could mistakenly be construed to imply
610 that the solicitation was issued or distributed by a
611 governmental agency or is sanctioned or endorsed by a
612 governmental agency.

SB 408 Addressed Public Adjusters' Deceptive Solicitation Practices

F.S. 626.854(8)(b)

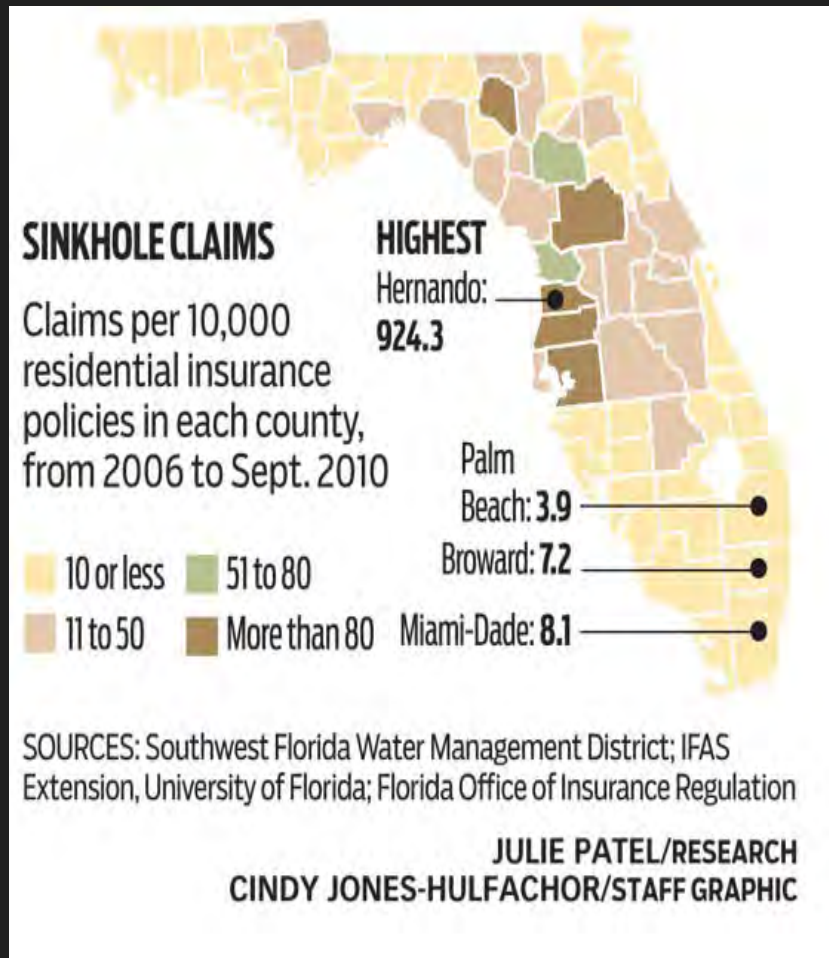
613 (b) For purposes of this paragraph, the term "written
614 advertisement" includes only newspapers, magazines, flyers, and
615 bulk mailers. The following disclaimer, which is not required to
616 be printed on standard size business cards, must be added in
617 bold print and capital letters in typeface no smaller than the
618 typeface of the body of the text to all written advertisements
619 by a public adjuster:

620 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
621 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
622 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
623 MAY DISREGARD THIS ADVERTISEMENT."

Why Is Claims Fraud Rampant?

- Approximately 25% of Americans believe that insurance fraud is not a crime.
- Perception is strengthened by state laws, most of which ineffectively punish offenders.
- For offenders, insurance fraud is low-risk, high-yield proposition.
- Insurers must take a proactive stance.

Where are the Claims?



The number of claims filed for sinkhole damage in each county per 10,000 policies. This includes nearly 25,000 claims reported to the state over 4.75 years.

Source: *abcactionnews.com*, January 22, 2011.

Fraud in Sinkhole Claims

- ✓ Date of Loss - intentionally either pre-dating or post-dating the discovery of sinkhole damage.
- ✓ Staging damages – creating physical losses to property to appear as sinkhole activity.
- ✓ Material misrepresentations in the application process.
- ✓ Failing to disclose previous known sinkhole activity to future insurance companies.
- ✓ Failing to disclose previous sinkhole damage and claims to future homebuyers.

Fraud in Sinkhole Claims

- ✓ Filing and Collecting on Claims without making repairs
- ✓ Collusion between Engineers and Contractors
- ✓ Contractors Overbilling for Alleged Work that Was Never Done .
- ✓ Lawyers, PAs and Contractors Encouraging Homeowners with Minor Cracks to File Claims
- ✓ Disputes over type of Remediation Solely to Drive Up the Cost of the Claim

Fraudulent Acts by Insureds



PINELLAS COUNTY, Fla.
- A Pinellas County woman, Lori Contorno, pled guilty to organized fraud, after she admitted falsifying an engineer's signature on questionable sinkhole repairs.

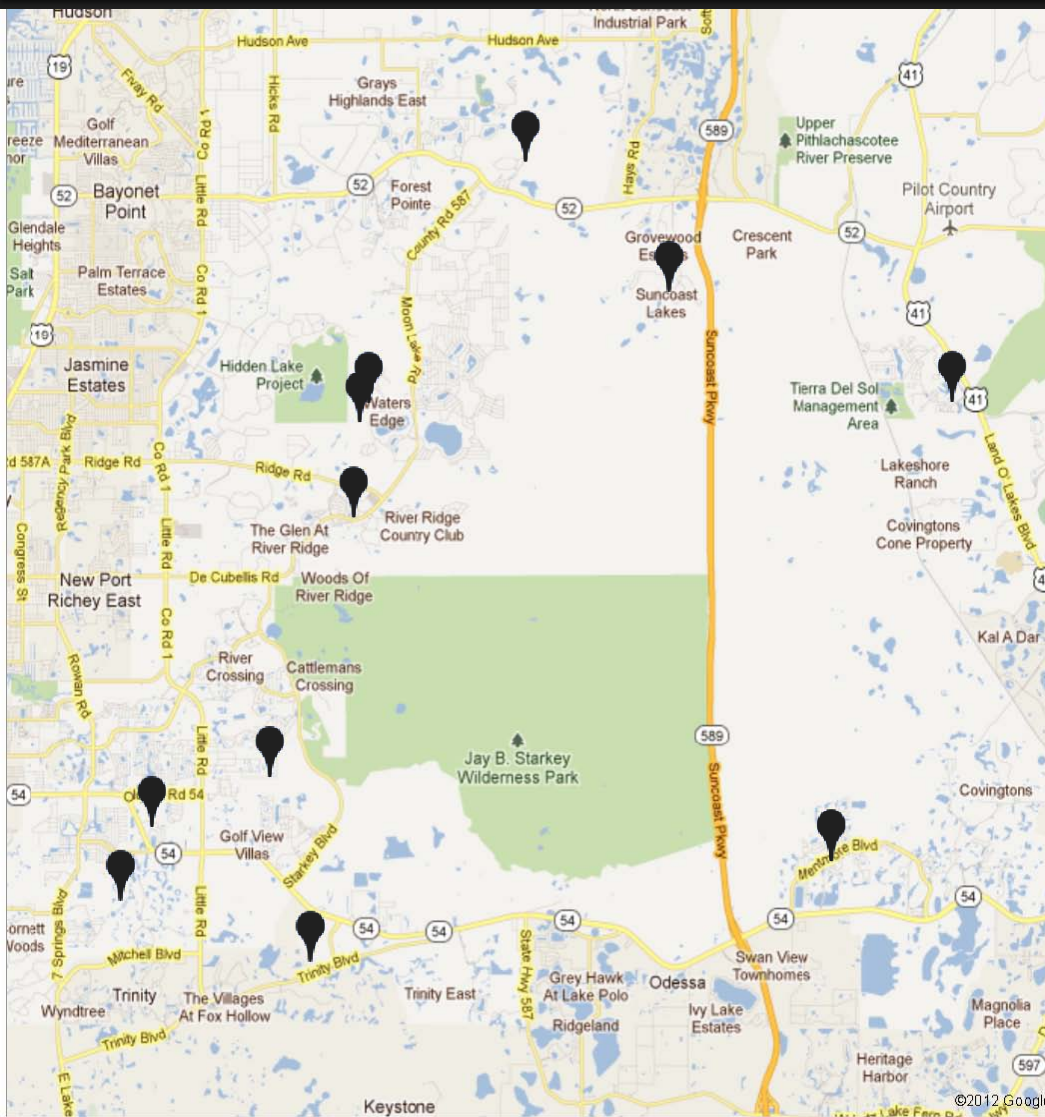
Source: abcactionnews.com, May 2, 2011.

Potential Fraudulent Acts

Pattern of Claims

Pasco County – Realtor Calvin Kemp has filed sinkhole claims on 12 of the 12 homes that he owns and received payment on several. A recent interview by I-Team Investigators determined that the tenant of one of the allegedly damaged homes states there is no visible damage anywhere.

Source: iteam@abcactionnews.com, October 31, 2011



Sinkhole Fraud by Others

Two charged with fraud after homes sold with sinkholes

BROOKSVILLE, Fla. - Two men were arrested after detectives say they sold homes that once were plagued by sinkholes in Hernando County. They say the pair bought homes that had sinkhole problems but placed them back on the market at full price without making the necessary repairs. When the new owners found out they had sinkholes they reported the problem to the insurance company. The claims were denied because of a payout to the previous owner for the same problem.

* * *

Detectives found evidence that they say showed the men had prior knowledge of the sinkholes when they bought the homes and didn't bother to tell the new owners. With the help of the FBI, the duo were found and arrested awaiting transport to Hernando County to face the fraud charges.

The three homes netted close to \$275,000 in profit according to the sheriff's office.

Source: abcactionnews.com, January 22, 2011.



Contractor Fraud

Sinkhole repair contractor arrested for fraud

Oviedo business owner was arrested for over-billing State Farm Insurance Company for fraudulent sinkhole claim repairs. Michael Hodge, owner of A&M Contracting Co., is charged with multiple counts of racketeering and insurance fraud involving billings of materials he never used to repair properties in Orange, Seminole and Volusia counties.

An investigation by the Florida Department of Financial Services, Division of Insurance Fraud, revealed that from 2004 to 2009 A&M Contracting over-billed State Farm for grout that was never used to repair sinkhole damage to properties in the Central Florida area. It was later discovered that Hodge received nearly \$182,000 in compensation for materials which he never purchased or used to repair the properties. Hodge was arrested by fraud detectives on Aug. 12 and released after posting bail. If convicted, he faces up to 25 years in prison.

Source: tampabay.com, August 16, 2011.



Engineering and Contractor Collusion

- Engineer Ram Goel was arrested for filing bogus permit applications in connection with Clicks Construction and its President, Robert Contorno, in an organized scheme to defraud. Carl Click, owner of the company is also awaiting trial. Lori Contorno, wife of Robert Contorno, has been sentenced to probation for her involvement in the scheme.

Source: www.abcactionnews.com, *Local Engineer Arrested in Sinkhole Fraud Scheme*, February 3, 2012



Are the Provisions Working?

REBATES NOW ILLEGAL

Before the law changed, "every company offered incentives back to the homeowner," Jeffrey Powell told the *Tampa Bay Times*. Powell said he sometimes gave "cash incentives" while working with Advanced Pier Technology. As an independent representative, Powell said, he would quote the homeowner a higher price for underpinning than what Advanced Pier quoted to Powell. "They'd let me sell it for \$700 (a pin) and I'd tell the homeowner \$900," he said. "I could make \$200. If I wanted to give the homeowner (money) back on that job, I would."

Source: Tampa Bay Times, January 2, 2012

Are the Provisions Working?

REBATES NOW ILLEGAL F.S. 627.707(5)(f)

If signed into law, HB1101 which just passed the House and Senate now clearly defines a rebate:

“As used in this paragraph, the term "rebate" means a remuneration, payment, gift, discount, or transfer of any item of value to the policyholder by or on behalf of a person performing the repairs specified in this section as an incentive or inducement to obtain repairs performed by that person. “

Are the Provisions Working?

"The incidence of claims is generally driven by the awareness of sinkholes or some type of scare tactics or advertising to home-owners saying, 'You've got coverage now, you may not have coverage later so if you have a claim file it now,' " said George Sinn, a geotechnical engineer who works for both insurers and homeowners. "So you get people who are used to living with typical small hairline cracks filing claims."

Source: (Tampa Bay Times, *Sinkholes become Florida's latest Insurance Disaster*, January 2, 2012)

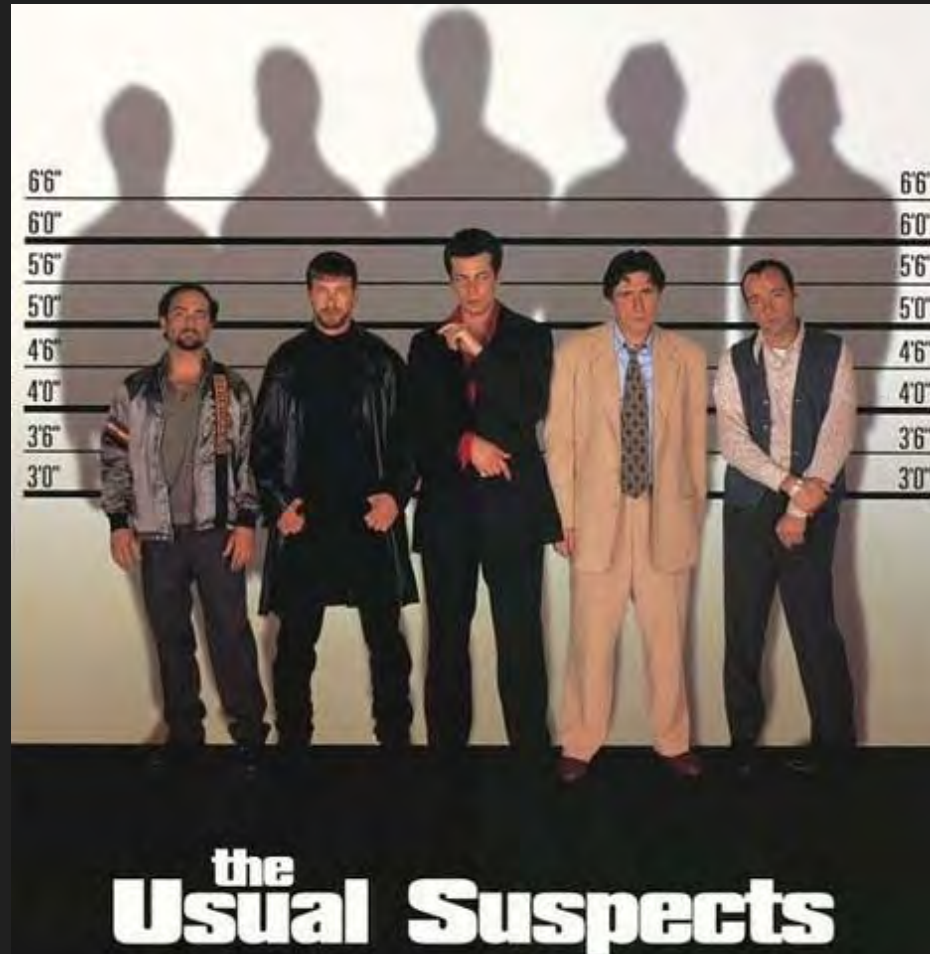
Utilizing the Tools in SB408

- Enforce the structural damage requirement
- Limit Testing and Require Cost Sharing for Additional Testing
- Ensure that Neutral Evaluators Evaluate Existence of Structural Damage as well as Existence of Sinkhole
- Insist on Repairs
- Pay for Subsurface Remediation only after Contracts Executed

Utilizing the Tools in SB408

- Report Fraud to DFS and local law enforcement
- Inspect Remediation and Construction Periodically
- File Sinkhole Reports with Clerk
- Utilize EUO's for potential back-dated claims
- Utilize 626 requests where there may be prior sinkhole claims

Collect Information For Use in Investigations



Examinations Under Oath

What is Reasonable?



Examinations Under Oath As Tools

- Virtually all insurance policies include conditions requiring the insured's cooperation before payments are due
 - Timely notice and proof of loss
 - Examination under oath
 - Production of requested documents
- The EUO is an effective weapon to ferret out fraudulent claims
- Most policies require insureds to submit “as often as may *reasonably* be required”

Examinations Under Oath

Boundaries of EUO – Guidance from the Courts



Examinations Under Oath

- Forfeiture of Insurance Benefits
- Is it a material breach of a condition precedent to suit?
- Are you prejudiced by the failure to cooperate?

Examinations Under Oath

■ Tips and Pointers

- Utilize defense counsel wisely
 - Don't just assign to defense counsel to take an EUO and report back
 - Ask for legal advice
 - “Are we on the right track?”
 - Do we *really* need more facts, or do we have enough to make a coverage decision?
 - Do we really *need* an EUO?” (Does the insured possess the facts we need?)

Questions?



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