

# PUBLIC ADJUSTERS OF COLORADO, LLC

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*“Adjusters for the Policyholder”*

Insured: Ironstone Condominiums at Stroh Ranch (ICASR)

Date of Loss: September 10, 2006

Policy Number: MXX 80856658

Claim Number: 005-07-390060

## **Commercial Property Coverage: Building – Roof Replacement**

Fireman’s Fund (FFIC) Regional General Adjuster, Mr. John Umland first visited the loss on April 25, 2007. At that time, ancillary problems were apparent due to the severe wind & hail loss occurrence. A number of units were experiencing interior water damage due to the failed roofs <sup>1</sup>. Loose and damaged shingles littered the complex grounds. This flying debris posed considerable liability risk to the ICASR Association and consequently to FFIC. Shortly after Mr. Umland’s first inspection, he gave authorization to emergency tarp the damaged roofs to protect the property from further damage and safeguard against potential liability issues.



**Figure 1 Photo shows example of extensive tarping applied to damaged roofs throughout complex. A total of 29 buildings were covered by the authorized emergency tarping efforts performed by Weather Guard Construction Company (WCC).**

<sup>1</sup> Please note that interior water damage repairs currently total approximately \$10k. Unit owners with outstanding problems are being contacted for full determination of interior damage claims. Interior water damage claims will be appended to your Insured claims made under “Sworn Statement in Proof of Loss” in the near future.

Upon authorization from FFIC's adjuster, Mr. Umland, WCC mobilized a number of crews to properly address the large scale problem. Emergency tarps, large and small, were neatly affixed to damage areas. Crews had to cut in and seal 100's of vents. Tarps were secured with battens and tie downs to stop interior leaks and prevent the flying shingle hazard. WCC has submitted a total invoice for "Emergency Tarping" work in the amount of \$63,525.28. PAC has reviewed extensive photo documentation of the completed tarping work and the physical aspects of the work performed. PAC finds WCC's invoice to be fair and reasonable on all accounts. Much of the work involved steep operations under windy conditions. The architectural roof design featuring numerous hips, offsets, and cuts required careful placement and fastening of the tarps. Based on the 29 buildings involved, WCC performed the services for an average of \$2,117.51 per building. We cannot understand why Mr. Umland has withheld proper claim payment since May of 2007 for the "Emergency Tarping" work performed.



**Figure 2 Photo shows numerous small and large tarps carefully applied to damaged roofs 3 story structures**

Part of the basis for Mr. Umland to authorize the "Emergency Tarping" was so he could fairly determine the roof replacement damage cost while avoiding immediate problems as discussed. However, on or about May 30, 2007, Mr. Umland issued a patently incomplete and deceptive Xactimate estimate to replace the roof on 1 of the 31 identical residential structures. Mr. Umland's Xactimate estimate dated 5/30/07 contained numerous deficiencies that would be compounded when applied to the 31 identical structures. Some of the more glaring estimate issues included the application of undersized shingles (20 yr. vs. 25 yr pre-existing; \$ 45.58 price shaving vs. actual), inappropriate scrap factors, insufficient ridge cap, insufficient drip edge, insufficient ice & water shield, use of wrong Xactimate pricing code, manipulation of pricing code, material sales tax shaving, project labor shaving, omission of project equipment, no safety provisions, and more... Mr. Umland's estimate tried to suggest a \$5,000.00 deductible per building. PAC is well versed in Xactimate and its appropriate use, but there is no question that Mr. Umland's efforts were of a deliberate nature. We believe Mr. Umland authorized the emergency tarping to buy time to develop an unfair and deceptive estimate with the intension of defrauding the Insured of rightful damage claim payments. We believe Mr. Umland could have avoided the emergency tarping if he immediately consented to fair market settlement of the damage claims.





**Figure 3 Photo shows numerous small and large tarps carefully applied to damaged roofs 3 story structures**

Assuming Mr. Umland's deceptive estimate of 5/30/07 had any validity, **which it did not**, his \$25,153.84 determination per primary residence structure times the 31 buildings yields a \$779,769.04 undisputed repair cost. Following Mr. Umland's same methodology, he would have had to make an additional allowance of \$122,564.32 for repairs to the 6 parking garages, clubhouse and mailbox structures. Mr. Umland knew or should have known that the recognized roof repair claims exceeded an undisputed \$939,062.61  $\{ \$779,769.04 + \$122,564.32 - \$5,000.00 \text{ (One deductible)} + \$41,729.25 \text{ (permit cost)} \}$ . Please remember that Mr. Umland's base unit estimate had the following issues: the application of undersized shingles in (20 yr. vs. 25 yr pre-existing; \$ 45.58 price shaving vs. actual), inappropriate scrape factors, insufficient ridge cap, insufficient drip edge, insufficient ice & water shield, use of wrong Xactimate pricing code, manipulation of pricing code, material sales tax shaving, project labor shaving, omission of project equipment, no safety provisions, failed to meet code provisions, and more...Did Mr. Umland issue a fair ACV claim payment based on his flawed and deceptive determination? The answer is no. On June 5<sup>th</sup> Mr. Umland issued a \$200,000 advance claim payment when he should have issued an undisputed ACV roof damage claim payment of approximately \$638,242.57. We believe Mr. Umland attempted to offer the Insured a "lowball" settlement offer in direct violation of the Colorado Unfair and Deceptive Claim Practices Act (UDCPA) CRS § 10-3-1104.

Mr. Umland's deceptive efforts did not stop with the issue of a grossly inadequate claim payment; he enlisted the assistance of two "storm chasing" roofing contractors to add credibility to his deceptive damage estimate. Centimark Corporation (\$766,585.00) and Premier Roofing Company (\$751,941.37) both supplied "lowball" proposals in support of Mr. Umland's deception. PAC has reviewed the entire roofing project and concludes that both Umland arranged contractors could not cover basic costs components at the indicated proposal prices (Based on the sum of raw materials costs, sale tax, disposal fees, basic equipment charges, and permit costs.). Please note this analysis excludes costs for all project labor, site safety considerations, and additional project factors required to meet building codes requirements with a manufacture warranted installation. Surely FFIC is aware that roof replacement work is very labor intensive. We can only assume that Mr. Umland either paid for false estimates or made under the table promises to endorse the participation of the two contractors involved. We made a

cursory inquiry and determined that both contracting firms complicit in Mr. Umland's deception are not registered as "not for profit" organizations. We assert that Mr. Umland knowingly engaged in unfair and deceptive tactics in an effort to defraud FFIC's insured or rightful fair market claim payments for the roof replacement damages. This effort was in addition to outright failure to make proper claim payment for authorized "Emergency Tarping" services incurred by your Insured.

Mr. Umland's efforts to prop up his flawed and incomplete damage estimate of 5/30/07 had a short term detrimental effect on the relationship between the ICASR Association and their contractor of choice, WCC. The association became concerned that WCC's roof replacement proposal of \$1,931,281.87 was excessive in light of the FFIC arranged evaluations. The ICASR Association reasoned that all FFIC arranged parties (Centimark, and Premier) are skilled in their trade and WCC's proposal appeared to be excessive. In many cases, with less competent boards, WCC would have been asked to leave. However, common sense prevailed, the ICASR Association performed sensible due diligence and verified that all FFIC arranged estimates could not cover the basic cost of work as previously discussed. The WCC proposal was determined to be well qualified and appropriate to complete the required roofing replacement. The ICASR Association was now fully aware of the breath of Mr. Umland's deception. No one could believe that a representative for a major insurance carrier could engage in the level of deception that had transpired. Mr. Umland's actions have violated the full intent of Colorado House Bill HB07-1104, signed into law on May 18, 2007, which prohibits an insurance carriers' from interference with the Insured's contractor of choice offering to complete damage repair work at fair market pricing.

It is now early August of 2007, the "blue tarped" complex had become the running joke of the City of Parker community. The weathered emergency tarps were failing from sun and wind exposure. Mr. Umland refused to authorize replacement of the failing tarps. The ICASR Association recognized that good weather for roof replacement work was rapidly closing. Mr. Umland had issued partial roof replacement claim payments totaling \$574,757.17 based solely on his flawed and incomplete evaluation. Mr. Umland continued to assert that his determination was fully supported by two quality contractors. Mr. Umland refused to address real concerns raised by the Insured. FFIC's Insured was faced with the full magnitude of the dilemma created by Mr. Umland: 1) Utilize inadequate roof replacement funds to repair failing tarps, postpone roof replacement work, and continue to pursue FFIC for rightful fair market claim payments; 2) Utilize the inadequate roof replacement funds as a down payment to complete work via WCC's qualified proposal, complete roof repairs on an accelerated schedule, and continue to pursue FFIC for rightful fair market claim payments. The ICASR Association after careful review opted to choose the latter as the most sensible course of action. Mr. Umland's unfair and deceptive tactics placed the Insured in tenuous situation inconsistent with FFIC's claim duty of good faith and fair dealings. We trust that FFIC management will fully investigate our claims of inappropriate conduct and take prompt action to properly indemnify your Insured's incurred fair market repair costs (Emergency Tarping \$63,525.28 and Roof Replacement \$1,931,281.87 Invoices).

The ICASR Association and WCC discussed the inadequate situation created by Mr. Umland and agreed to proceed with the actual roof replacement operations without the proper assurance of full claim payment from FFIC. WCC's revised proposal of \$1,931,281.87 was forwarded to Mr. Umland. WCC once again juggled their project scheduling to accommodate the replacement work at the ICASR complex. Safety scaffolding was quickly erected and roof replacement operations were conducted on an accelerated schedule consisting of 12 hour shifts, 6 days per week to complete the project 45 days. WCC's installation efforts were exceptional, quality work was completed meeting applicable building code and GAF warranty requirements. Please note that ice & water shield was installed in accordance with GAF technical installation specifications (perimeters and valleys over 4/12 pitch) to meet warranty requirements. Shingles were six nailed to meet Parker and Douglas County building code wind rating requirements. Please note Mr. Umland remains unwilling to accept and make appropriate claim payment reflecting these basic installation requirements despite policy coverage provisions.

Following completion of the roof replacement work at the complex, Mr. Umland was faced with full claim payment of the “fair market” WCC proposal of \$1,931,281.87. Did Mr. Umland issue full claim payment for the completed work represented by the WCC “fair market” proposal? The answer is no. Mr. Umland instead crafted a new Xactimate estimate dated 9/25/07 that patently shaved true work costs so FFIC’s determination of claim damages for the completed roof replacement work was **\$1,075,116.43**. Mr. Umland’s deceptive Xactimate efforts on behalf of FFIC resulted in a completed roof replacement cost differential of **\$856,165.44**. PAC carefully reviewed Mr. Umland’s Xactimate estimate of 9/25/07 of **\$1,075,116.43** versus the WCC proposal of **\$1,931,281.87** and note the following major concerns:

- Ignored additional debris removal costs in the WCC proposal. Xactimate \$45.00 “tear off” per square allots an embedded disposal cost of \$6.74 per ton of roof scrap. By calculation, this results in an estimated \$401 short fall per dumpster of scrap material (1 dumpster = 54 squares of tear off). Also ignored disposal requirements for new installation scrap (15% waste factor).  
**Deviation: \$38,893.35 + O&P**
- Removed installation of perimeter and valley ice & water shield required for GAF installation warranty (See the GAF Technical Specifications – Section 5).  
**Deviation: \$121,655.00 + O&P**
- Neglected or omitted many installation details.
- Shaved WCC roofing price per square of \$175.00 vs. \$132.67 (FFIC).  
**Deviation: \$126,220.44 + O&P**
- Ignored WCC costs for OSHA tie-offs and difficult access issues.  
**Deviation: \$77,222.25 + O&P**
- Shaved steep and high operation charges represented by WCC and neglected O&P on all.  
**Deviation: Differential \$25,034.31 + O&P on total**
- Used an incorrect Xactimate pricing detail for all tasks shaving the majority of the line item replacement costs. Not only did Mr. Umland use the wrong Xactimate pricing detail (CODE4B7B vs. CODE4B7C: Work performed in 3<sup>rd</sup> Quarter not 2<sup>nd</sup> Quarter.) but it appears that he further manually altered the published pricing as much as 7 to 15 percent on many key items (See published Xactimate price lists Sections 10 and 11). We view this as highly deceptive.
- Intentionally omitted proper O&P treatment on many trade items in contradiction to Xactimate white papers and Mr. Umland’s prior Xactimate estimate dated 5/30/07. We view this as another deliberate attempt to avoid rightful fair market claim payment for completed work.  
**Deviation: Differential \$261,452.24**

The issues noted above clearly delineate the majority of “fair market” costs shaved off by Mr. Umland’s Xactimate estimate of 9/25/07. PAC points out that WCC was not utilizing Xactimate to determine their proposed cost of \$1,931,281.87. WCC was using their internally developed expert roof replacement estimating methodology, which on an overall basis mirrors a fully burdened Xactimate determination. However, the individual WCC scope line items do not directly compare to Xactimate task details. Therefore Mr. Umland’s Xactimate effort was not an apple to apple comparison, he selectively used WCC data to create a watered down pricing determination. We believe Mr. Umland’s efforts were intentional by virtue of some of his estimating efforts involved. Mr. Umland’s flawed and incomplete Xactimate estimate of 9/25/07 was used by FFIC to unfairly diminish proper “fair market” claim payment to your Insured. We believe this intentional effort has violated provisions of the Colorado UD CPA CRS§10-3-1104 including HB07-1104.

In an effort to determine the true “fair market” price to replace the roofs in the complex, PAC independently reviewed all aspects of the roofing repair project and made an independent Xactimate estimate reflecting actual work performed. Since FFIC routinely uses Xactimate to make fair damage claim payments, PAC’s complete Xactimate estimate dated 1/12/08 entitled **Ironstone Roof** should be recognized by FFIC as a “fair market”, apple to apple, determination for the actual roof repair work performed. Please note the PAC Xactimate estimate dated 1/12/08 excludes emergency tarping costs separately invoiced by WCC. The independent PAC Xactimate determination considered the following:

- Precise takeoff of the actual roofing work performed.
- Utilization of the proper 3rd quarter Xactimate pricing model.
- Correction of Xactimate sub-assembly deficiencies which include (roofing debris removal considerations, painting labor for vent painting operations, etc.).
- Proper application of sales tax on raw materials.
- Utilization of invoiced services where practical (scaffold erection, high lifts, permit receipts).
- Added code installation requirements (6 nailing vs. allotted 4 nailing)
- Technical installation requirements for GAF warranty (ice & water shield in perimeter and valley areas over 4/12 slope).
- Accelerated construction labor costs (12 hours per day/6 days per week)
- Application of proper overhead & profit applied in accordance with Xactimate white papers.

The complete PAC Xactimate determination of 1/12/08 indicates a “fair market” roof repair cost of \$1,956,672.27 vs. the WCC invoiced cost of \$1,931,281.87 and Mr. Umland’s 9/25/07 determination of \$1,075,116.43. Even though WCC’s detailed proposal supporting the invoiced repair cost was not Xactimate based, we conclude their expert estimating methodology seems to closely compare to PAC’s complete Xactimate determination for the physical work performed. The WCC invoiced repair cost represents a \$25,539.40 discount to insurance industry recognized “fair market” valuation utilizing Xactimate. Mr. Umland’s 9/25/07 determination can only be qualified as grossly incomplete. Applying an apple to apple comparison of PAC’s complete Xactimate determination of 1/12/08 (\$1,956,672.27) and Mr. Umland’s grossly incomplete Xactimate determination of 9/25/07 (\$1,075,116.43), the following errors, deviations, and omissions are specifically noted:

1. Roofing felt – 15 lb does not include waste, price incorrect, and no O&P.
2. Roofing felt – 30 lb does not include waste, price incorrect, and no O&P.
3. Roofing installation has incorrect price, and no O&P.
4. Additional costs for 6 nailing to meet code not included.
5. Measurement for steep roof operations is incorrect, price incorrect, and no O&P.
6. Price for high roof is incorrect, and no O&P.
7. Drip edge measurement is incorrect, price incorrect, and no O&P.
8. Valley metal measurement is incorrect, price incorrect, and no O&P.
9. Ice & water shield is costs excluded ( installation requirement for manufacture warranty).

10. Ridge cap price is incorrect, and no O&P.
11. Flashing pipe jack price is incorrect, and no O&P.
12. Roof vent – Turtle type price is incorrect and no O&P.
13. Furnace vent price is incorrect and no O&P.
14. Clothes dryer vent price is incorrect and no O&P.
15. Chimney flashing price is incorrect and no O&P.
16. Step flashing measurement is incorrect, wrong price and no O&P.
17. Aerosol paint price does not include labor and no O&P.
18. Caulking – butyl rubber is not included.
19. Ariel lift does not include a price – This should be \$15,966.20 + O&P.
20. Fuel for Ariel lift quantity is wrong – This should be 120 gallons.
21. Scaffolding quantity is wrong and price per unit is incorrect.
22. Temporary toilet – Price is incorrect.
23. General labor quantity is incorrect and no O&P.
24. Equipment Operator quantity is incorrect and no O&P.
25. Commercial supervision quantity is incorrect and no O&P.
26. Additional disposal costs. The Xactimate sub assemblies allot debris disposal costs of \$6.74 per ton of “tear off” which equates to approximately \$47 per dumpster. This creates a \$401 shortage per dumpster at Xactimate based pricing (1 dumpster = 54 squares of tear off).
27. Additional debris removal associated with new installation scrap (15%).
28. Accelerated Construction Premium not included.
29. Material Sales Tax should be 8.1%.
30. Improper application of contractor O&P to all estimate line items. Mr. Umland applied full O&P in first Xactimate estimate dated 5/30/07 and deliberately omitted proper application of O & P, contradictory to Xactimate “White Papers” describing fair estimate treatment, when it was time to issue fair market claim payment.

Under the policy provisions, FFIC has a duty to fully evaluate our complete “fair market” determination of the roof replacement costs as presented by PAC. Unless a reasonable discrepancy is identified, we expect FFIC to tender full claim payment for the completed roof replacement work based on the WCC invoiced amount of \$1,931,281.87 within 30 days. In Colorado, House Bill HB07-1104 prohibits an insurance carrier from interference and/or failing to settle claims when an Insured selects a contractor of choice and completes repairs at a “fair market” price. Based on the detailed independent Xactimate analysis, we believe FFIC will be hard pressed to assert that the WCC estimate is not a “fair market” price . We urge FFIC to prudently settle this open claim matter in conformance with the policy contract.