



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

**CEASE AND DESIST ORDER  
AND  
NOTICE OF FINE**

May 1, 2023

TO: McClenny Moseley & Associates, PLLC                      Article # 9589 0710 5270 0160 8404 20  
1820 St. Charles Avenue Ste. 110  
New Orleans, LA 70130

McClenny Moseley & Associates, PLLC                      Article # 9589 0710 5270 0160 8404 37  
1415 Louisiana St. Ste. 2900  
Houston, TX 77002  
New Orleans, LA 70130

Via Email: [messages@mma-pllc.com](mailto:messages@mma-pllc.com)  
[James@mma-pllc.com](mailto:James@mma-pllc.com)  
[Zach@mma-pllc.com](mailto:Zach@mma-pllc.com)

WHEREAS, IT HAS COME TO MY ATTENTION, as Commissioner of Insurance (Commissioner) of the Louisiana Department of Insurance (“LDI” and/or “Department”), that McClenny Moseley & Associates, PLLC, William Huye III, John Moseley and James McClenny, as managing partners and/or members of McClenny Moseley & Associates, PLLC, have violated certain provisions of the Louisiana Insurance Code, Title 22, La. R.S. 22:1 et seq. Accordingly, pursuant to the power and authority vested in me as Commissioner, I issue this Cease-and-Desist Order and Notice of Fine based on the following, to wit:

**FINDINGS OF FACT**

1.

McClenny Moseley & Associates, PLLC, is a Texas domiciled professional limited liability company, and law firm. McClenny Moseley & Associates, PLLC registered with the Louisiana Secretary of State on October 26, 2020, with its registered office in Louisiana located at 1820 St. Charles Avenue, Suite 110, New Orleans, LA 70130. Its registered agent is William Huye, by appointment dated June 2, 2022, and officers include managing members James McClenny and John Moseley. The business registration for McClenny Moseley & Associates, PLLC was revoked on March 15, 2023, by the Louisiana Secretary of State. According to LDI records, McClenny Moseley & Associates, PLLC is not licensed to participate in the business of insurance in any way that a license issued by the LDI is required.

2.

Apex Roofing and Restoration L.L.C. (hereinafter referred to as “APEX”) is an Alabama domiciled limited liability company, and Louisiana licensed contractor, representing and marketing

itself as a roofing company providing storm restoration services. APEX is registered with the Louisiana Secretary of State with its principal business establishment in Louisiana located at 1 Galleria Blvd, Suite 1900, Metairie, LA 70001. According to LDI records, APEX is not licensed to participate in the business of insurance in any way that a license issued by the LDI is required.

3.

The LDI has evidence that McClenny Moseley & Associates, PLLC, and its principals, managers and/or partners Richard William Huye III, John Moseley and James McClenny (collectively referred to herein as "MMA") participated in a fraudulent scheme and/or trade practice constituting unfair methods of competition and unfair or deceptive acts and practices in this State within the business of insurance.

4.

On February 17, 2023, the Commissioner issued a Cease-and-Desist Order and Notice of Wrongful Conduct and Notice of Investigative Proceedings to MMA having found, and incorporates as findings, each of the following:

a.

MMA, in connection with a contractual arrangement between MMA and APEX, fraudulently misrepresented to multiple Louisiana insurance companies that MMA had been retained by Louisiana insureds as their attorney and/or legal counsel related to the settlement of hurricane related insurance claims without the knowledge of the insureds MMA purported to represent.

b.

MMA admitted to, according to a transcript of the court proceeding held on February 1, 2023, by the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, having sent letters of representation to insurance companies on behalf of insureds, while MMA did not represent those insureds, but rather represented APEX. During the proceeding, when questioned by the Judge, MMA admitted to filing one lawsuit and settling eleven (11) claims on behalf of insureds without the insureds' knowledge and consent.

c.

On February 13, 2023, via written responses to Orders issued by the Honorable Michael B. North, MMA admitted to 856 misrepresentations to Louisiana insurers that MMA was retained by the insureds/homeowners, when in fact MMA did not represent those insureds/homeowners relative to claims for payment and benefits under those insurance policies.

d.

In one of the 856 files, wherein MMA admitted to misrepresenting themselves to have been retained by insureds Michael and Holly Caffarel, in relation to a claim for benefits, which was erroneously reported as Hurricane Laura in the LDI's C&D of February 17, 2023, the LDI has learned via a complaint filed by counsel retained by the Caffarels that the Caffarels only learned of the fraudulent claim representation when Chase Bank, the mortgage holder and listed payee on the insurance proceeds settlement check, endorsed the check for damages and sent the check to the Caffarels.

e.

In a separate admission in response to the Order issued by Judge North following the February 1, 2023 hearing, MMA admitted to the Court that it had settled nine (9) claims while MMA did not represent the insureds connected to those claims.

f.

Transcripts obtained [by] the LDI of a court proceeding held on December 13, 2022, before the United States District Court for the Western District of Louisiana, with The Honorable James D. Cain, Jr. presiding, revealed that MMA received and deposited a check, dated August 24, 2022, from "Allstate" representing proceeds from an insurance settlement. The settlement check was made payable to MMA, Mel Addison and Adriana L. Addison (the insureds/homeowners) and Accord Services, Inc. Accord Services, Inc. is listed as the mortgage holder for the property for which the insurance benefits were claimed on and paid. According to the unrefuted testimony by Kermith Sonnier, the owner of Accord Services, Inc., MMA was never given permission to sign the name of Accord Services, Inc. to the settlement check at issue. Mr. Sonnier further testified that he had never spoken with MMA about the check. Representatives of MMA in the proceeding, and specifically William Huye III, did not refute that MMA deposited and retained settlement proceeds payable to Accord Services, Inc. in the hearing, nearly 6 months following the issuance date of the settlement check. A copy of the check at issue reveals an endorsement negotiation, on behalf of Accord Services, Inc., placed onto the back of the check by MMA.

5.

Insurance is an industry affected with the public interest and it is the purpose of the Louisiana Insurance Code to regulate that industry in all its phases. It is the duty of the Commissioner of Insurance to administer the provisions of the Louisiana Insurance Code, which includes the statutory provisions referenced herein. The Department of Insurance (LDI) is an agency of the executive branch of state government allocated functions, powers, duties and responsibilities by the Louisiana State Constitution and as provided by statutory law. The Office of Insurance Fraud created within the LDI is mandated by state law to investigate fraudulent insurance acts and other violations of the insurance laws of this State. The Commissioner of

Insurance serves as the executive head and chief administrative officer of the LDI and is both empowered and entrusted with the responsibility for the operation of the functions of the LDI in the interest of and representation of the public to the extent provided by state law—including administering the provisions of the Louisiana Insurance Code. Part IV. Unfair Trade Practices of the Louisiana Insurance Code defines and provides for the determination by the Commissioner of all acts, methods of competition and unfair or deceptive acts and practices within the industry of insurance by all persons, natural or artificial, in this State and provides for the enforcement penalties for violation of such acts, which includes prohibited acts affecting the business of insurance.

**6.**

Having found by MMA's own admissions that MMA has engaged in acts or practices in violation of the Louisiana Insurance Code, investigative proceedings were commenced by the LDI's Office of Insurance Fraud (hereafter "LDI") into the practices of MMA in the business of insurance within the state of Louisiana.

**7.**

The LDI interviewed at least 43 of the 856 Louisiana insureds and/or homeowners (collectively "consumers") that MMA purported to have been retained to represent. The 43 Louisiana consumers interviewed consistently stated that MMA represented them regarding their property damage claims without their consent.

**8.**

MMA, who knowingly and with the intent to defraud, presented, to Louisiana insurers, letters of representation and written statements in support of claims for payment, or other benefits available under policies of insurance, while knowing that MMA's representations contained materially false and/or misleading information concerning MMA having been retained by the specifically named insureds.

**9.**

The LDI has obtained notarized statements, from Louisiana consumers, attesting to deceptive acts or practices related to false and/or misleading representations made by MMA. MMA's deceptive acts or practices were orchestrated with MMA's full knowledge and intent to deceive Louisiana insurers, and consumers, for the purpose of unlawfully retaining legal fees, diverting claim proceeds, or other policy benefits, owed to or by the defrauded parties.

**10.**

According to sworn testimony and other evidence in the possession of the LDI, the scheme or artifice to defraud Louisiana insurers and consumers included, but may not be limited to, the following:

a.

APEX contacted the Louisiana consumer, often at their residence, where the consumer consented to APEX's evaluation of the consumer's roof for potential damage.

b.

Louisiana consumers signed documents, at the request of APEX, wherein consumers were led to believe that the forms executed allowed APEX to evaluate the consumer's need for a claim and/or file a claim with the consumer's insurer, relative to roof damage, via an assignment of the consumer's insurance benefit to APEX.

c.

Consumers did not understand that a law firm, and specifically MMA, was being retained by the Louisiana consumer to represent them by assigning their insurance benefits to APEX. Further, to the extent that any consumer was aware of the potential involvement of an attorney, consumers were led to believe that the extent of their financial obligation, associated to the claim presented for roof damage, would not exceed the consumer's deductible.

d.

After assigning the consumers' insurance benefits to APEX, APEX executed an attorney employment contract purportedly between the consumer and MMA. This contract was entered into without the consumers' knowledge or consent. Thereafter, either APEX or MMA ordered an estimate of the damages related to the property claim resulting in an increased expense against the insurance claims settlement proceeds, reducing the settlement proceeds available to the consumer, when APEX should have been able to present MMA, as APEX's counsel, an estimate of the damages that allowed MMA to pursue APEX's interest.

e.

MMA sent letters of representation, in support of the consumers' claims for payment, to Louisiana insurers, purporting to have been retained by Louisiana insureds, without the insureds' knowledge and consent. In many instances, MMA, who was retained by APEX to recover roofing damage through an assignment of benefits, exceeded the scope for which APEX was retained by the consumer.

f.

Following a hearing on February 1, 2023, in the United States District Court for the Eastern District of Louisiana, where MMA was challenged by The Honorable Michael B. North as to who the firm represented in the matter before the court, MMA issued a "Clarification of Previous Letter of Representation", which stated in pertinent part, "McClenny Moseley and Associates, PLLC does not represent your insured in this matter".

g.

MMA, through their letters of representation, directed Louisiana insurers to send correspondence via electronic transmission to MMA. MMA's letter of representation forced insurers, who understood the legal implications of speaking with a party represented by legal counsel without consent, to communicate directly with MMA. This prevented Louisiana consumers from gaining knowledge that insurance claims were being made on their behalf, that settlement discussions were ongoing between the involved Louisiana insurers and MMA, and that insurance settlement proceeds belonging to Louisiana consumers were being disbursed to MMA.

h.

MMA continued its fraudulent representation, which included sending demands for payment to Louisiana insurers and negotiating claims settlements, until either a Louisiana insurer issued insurance claim settlement proceeds to MMA, without the insured's knowledge and consent, or MMA was requested to withdraw their representation by the consumer.

i.

In one instance, MMA filed a lawsuit against a Louisiana insurer, for a consumer they purported to represent, without the consent or authority to do so.

j.

According to admissions made by William Huye III to the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, Mr. Huye admitted that a "Settlement Breakdown", which included a Power of Attorney authorizing MMA to endorse settlement proceeds on behalf of Louisiana consumers, was sent to APEX for presentation and execution by the insured party. The "Settlement Breakdown" included an offset against the insurance settlement proceeds for legal services rendered by MMA and expenses MMA incurred in their presentation of the claim to Louisiana insurers, neither of which were authorized by consumers at the time the legal services were rendered or expenses incurred.

k.

The LDI continues to develop evidence related to the factual occurrences beyond the execution of the Settlement Breakdown, which includes a Power of Attorney. However, consumers have expressed the inability to access insurance settlement proceeds diverted via MMA's fraudulent representation, which totals over \$185,000.00 for consumers who provided the LDI with sworn statements.

**11.**

According to their testimonies, Louisiana consumers discovered that they were being represented by MMA upon settlement of their claims, upon calling the insurance company to determine the status of their claims, or after being contacted by representatives of MMA by email or telephone. When Louisiana consumers and/or insurers challenged MMA relative to their fraudulent legal representation of Louisiana consumers, MMA forwarded letters of withdrawal of representation to the Louisiana consumers and insurers without any significant response to the challenges regarding their representation.

**12.**

The Commissioner has found that Louisiana consumers were unaware of the scheme or artifice referenced herein, however; MMA, being trained in the practice of law and understanding the legal implications and repercussions once a letter of representation had been sent to Louisiana Insurers, had full knowledge that sending a letter of representation would veil MMA's scheme from both Louisiana insurers and consumers, until a time of MMA's choosing, and in some instances, a time when consumers were most vulnerable. The false representations of having been retained as legal counsel on behalf of Louisiana consumers was the vehicle or artifice necessary to bring about, and keep hidden, the fraudulent practices of MMA.

**13.**

The Commissioner is in possession of credible evidence to support that MMA knowingly intended, from, at the latest, the inception of its purported letters of representation, to keep the Louisiana consumers and Louisiana insurers unaware of MMA's surreptitious plan to divert insurance claim proceeds to their benefit. In doing so, MMA deceived both the insureds and insurers and not only diverted insurance proceeds, but in some instances, collected a predatory professional services fee, representing between 10.0% and 33.3% of the insurance settlement proceeds, a fee MMA would not have received without the employment of the scheme.

**14.**

At least 43 Louisiana consumers, and 25 of those while under oath, have testified that the consumers had no intent to hire an attorney to represent them and had no knowledge of MMA's representation. After interviewing a small sample of the 856 consumers where MMA admitted to having made the misrepresentations, the LDI has obtained at least 39 letters of representation issued by MMA and finds the transmission of the letters to Louisiana insurers to be a fraudulent insurance act. The letters of representation, in pertinent parts, states:

"Please be advised that McClenny Moseley & Associates PLLC has been retained by [Specifically named Louisiana consumer] (hereafter "Client") as legal counsel for their above referenced insurance claim. Effective immediately, please direct all communications to [claims@mma-llc.com](mailto:claims@mma-llc.com)."

“This notice shall also serve as our Client’s formal notice that our Client, through undersigned counsel, is making a claim for all coverages available under the Policy and request that you start their claim.”

“In addition to the above, this letter serves as a notice that McClenny Moseley & Associates’ representation relates to any and all claims made by our Client regarding their above referenced loss and property located at the address listed above.”

“Accordingly, as it relates to our Client, the specified location and claim, or any other related property or claim for insurance proceeds, please conduct your communication under the conditions specified above, with payments made accordingly. **This requires that McClenny Moseley & Associates, PLLC be listed as a payee on any payment or draft made from this point forward.**” (Emphases added by MMA and not the LDI)

“Please note, although the property will be made available for inspection, our Client will not be made available for questioning during the property inspection and any communication with our Client is strictly prohibited.”

“Our client requests that you extend the professional courtesy of sending all correspondence, document production, etc. via email to [claims@mma-pll.com](mailto:claims@mma-pll.com). **Our Client has a strong preference to correspond via email to ensure clear and timely responses.**” (Emphases added by MMA and not the LDI)

Combined with the presentation of 32 demands to Louisiana insurers, invoking the appraisal provision of the policy in four instances, and positioning MMA to receive 15 insurance proceed checks, ten of which were negotiated and all without authority to represent the consumer, MMA engaged in at least 90 fraudulent insurance acts.

## **APPLICABLE LAW**

### **15.**

#### **§2. Insurance regulated in the public interest**

A. (1) Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases....[I]t shall be the duty of the commissioner of insurance to administer the provisions of this Code.

La. R.S. 22:1923 maintains in pertinent part:

#### **§ 1923. Definitions**

(2) “Fraudulent insurance act” shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:



- (a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, producer, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:
  - (iii) A claim for payment or benefit pursuant to any insurance policy.
- (d) Diverts, attempts to divert, or conspires to divert funds of an insurer, reinsurer, or other entity regulated under the laws of this state, or other persons in connection with:
  - (ii) The conduct of business activities by an insurer, reinsurer, or other entity regulated by the insurance laws of this state.
- (m) Receives money or any other thing of value from any person, firm, or entity as a means of compensation for the acts of solicitation or criminal conspiracy done for the purpose of executing a scheme or artifice to defraud a person.

La. R.S. 22:1924 maintains in pertinent part:

**§ 1924 Prohibited activities and sanctions**

- A. (1) (a) Any person who, with the intent to injure, defraud, or deceive any insurance company, or the Department of Insurance, or any insured or other party in interest, or any third-party claimant commits any of the acts specified in Paragraph (2) or (3) of this Subsection is guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed five thousand dollars, or both, on each count.
  - (b) In addition to the criminal penalties provided in Subparagraph (a) of this Paragraph, the defendant shall make payment of restitution to the victim or victim company of any insurance payments to the defendant that the court determines were not owed and the costs incurred by the victim or victim company associated with the evaluation and defense of the fraudulent claim, including but not limited to the investigative costs, attorney fees, and court costs. However, if the amount of the benefit that is the subject of the criminal act does not exceed one thousand dollars, the term of imprisonment shall not exceed six months, and any fine shall not exceed one thousand dollars on each count.
- (2) The following acts shall be punishable as provided in Paragraph (1) of this Subsection:
  - (a) Committing any fraudulent insurance act as defined in R.S. 22:1923.
  - (c) Assisting, abetting, soliciting, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to any insurance company, insured, the Department of Insurance, or other party in interest or third-party claimant in connection with, or in support of or denial, or any claim for payment of other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information, concerning any fact or thing material to such claim or insurance policy.

La. R.S. 22:1963 maintains in pertinent part:

**§1963. Unfair methods and unfair or deceptive acts and practices prohibited**

No person shall engage in this state in any trade practice which is defined in this Part to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of the business of insurance, including unauthorized insurance as provided in R.S. 22:1902 et seq. or the failure to maintain professional liability insurance, if such coverage is required pursuant to R.S. 22:1570.1.

La. R.S. 22:1964 maintains in pertinent part:

**§ 1964. Methods, acts, and practices which are defined as unfair or deceptive**

The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(12) Any violation of any prohibitory law of this state.

(13) Fraudulent insurance act. A fraudulent insurance act is one committed by a person who knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, producer, or any agent thereof, any written statement as part of, or in support of, or in opposition to an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceal for the purpose of misleading information concerning any fact material thereto.

**§1967. Power of commissioner of insurance**

The commissioner of insurance shall have power to examine and investigate the affairs of every person engaged in the business of insurance, including violations of R.S. 22:1902 et seq., in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this Part.

**§1968. Notice of hearing**

Whenever the commissioner shall have reason to believe that any person has been engaged or is engaging in this state in any unfair trade practice as defined in this Code, whether or not defined in this Part, the commissioner shall issue a notice of wrongful conduct to said person in accordance and compliance with R.S. 49:961 describing the unfair trade practice and citing the law which is deemed by the commissioner to be violated.

La. R.S. 22:1969 maintains in pertinent part:

**§1969. Violations, penalties**

- A. If, after receiving the person's answer or response or if no answer or response is received within twenty days of receipt of mailing, faxing, or delivery of the notice, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice and order any one or more of the following:
- (1) Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars unless the person knew or reasonably should have known he was in violation of this Part, in which case the penalty shall be not more than twenty-five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of five hundred thousand dollars in any six-month period
  - (2) Suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of this Part.

**CONCLUSIONS OF LAW**

**16.**

The Commissioner, based on the facts presented, has found **McClenny, Moseley & Associates, PLLC** in violation of multiple provisions set out in Title 22, specifically La. R.S. 22:1924(A)(1)(a), and (2)(a) and (c) as defined by La. R.S. 22:1923, in addition to unfair trade practices under Louisiana Insurance Code, specifically La. R.S. 22:1964 (12) and (13).

**17.**

**COMMISSIONER'S ACTION**

As a result of the investigation and documentation in possession of the LDI, the LDI has determined that emergency action is required to protect the public health, safety, and welfare, and the Louisiana Commissioner of Insurance hereby orders **McClenny, Moseley & Associates, PLLC**, including its members, agents, employees, assignees and representatives, and William Huye, III, John Moseley and James McClenny, in accordance with La. R.S. 22:1969, to **CEASE AND DESIST** from the activity and the violations of law stated above.

In addition, in accordance with La. R.S. 22:1969, the Commissioner hereby fines **McClenny, Moseley & Associates, PLLC**, in the amount of **\$500,000.00**.

18.

**YOUR ACTION**

Please remit your **\$500,000.00** fine payment and a copy of this notice to:

Louisiana Department of Insurance  
Attention: Accounts Receivable  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

Pursuant to La. R.S. 22:2191(A)(2), any person aggrieved by an act of the Commissioner may request a hearing. You must make a written demand for an appeal within thirty (30) days from the date of this notice. Failure to file a written demand for an appeal within thirty (30) days from this notice will preclude your right to an administrative hearing.

Pursuant to La. R.S. 22:2191(B), your written demand for an appeal (1) shall reference the particular sections of the statutes and rules involved; (2) shall provide a short and plain statement of the matters asserted for review; and (3) shall attach a copy of the order or decision that you are appealing. Appealing this notice does not stay the action of the Commissioner of Insurance. Pursuant to La. R.S. 22:2204, you must request and be granted a stay of this action by the Division of Administrative Law. Your request for a stay may be included in your appeal. Your written demand for an appeal shall be filed with the Louisiana Department of Insurance at the addresses below:

Louisiana Department of Insurance  
Attn: J. David Caldwell, Executive Counsel  
P. O. Box 94214  
Baton Rouge, LA 70804-9214

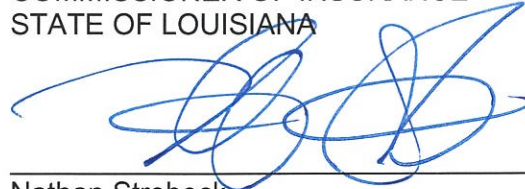
Telephone: (225) 342-4673  
Fax: (225) 342-1632

File in Person at:

1702 N. Third Street  
Baton Rouge, LA 70802

Signed in Baton Rouge, Louisiana this 1<sup>st</sup> day of May 2023.

JAMES J. DONELON  
COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA



BY:

\_\_\_\_\_  
Nathan Strebeck  
Deputy Commissioner  
Office of Insurance Fraud  
Louisiana Department of Insurance  
Telephone: (225) 219-5819

**CERTIFICATE OF SERVICE**

**Article # 9589 0710 5270 0160 8404 20**  
**Article # 9589 0710 5270 0160 8404 37**

I hereby certify that I have this day served the foregoing document upon McClenny, Moseley & Associates, PLLC by mailing a copy thereof properly addressed with postage prepaid, this 1<sup>st</sup> of May 2023.

Takiyah Banks  
Printed Name

Takiyah Banks  
Signature



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

### CEASE AND DESIST ORDER AND NOTICE OF FINE

May 1, 2023

TO: James McClenny, Esq.  
McClenny Moseley & Associates, PLLC  
1415 Louisiana Street, Ste. 2900  
Houston, Texas 77002

Article # 9589 0710 5270 0160 8403 76

James McClenny  
380 Ridgelake Scenic Drive  
Montgomery, TX 77316

Article # 9589 0710 5270 0160 8403 69

Via Email: [James@mma-llc.com](mailto:James@mma-llc.com)

WHEREAS, IT HAS COME TO MY ATTENTION, as Commissioner of Insurance (Commissioner) of the Louisiana Department of Insurance (“LDI” and/or “Department”), that McClenny Moseley & Associates, PLLC, William Huye III, John Moseley and James McClenny, as managing partners and/or members of McClenny Moseley & Associates, PLLC, have violated certain provisions of the Louisiana Insurance Code, Title 22, La. R.S. 22:1 et seq. Accordingly, pursuant to the power and authority vested in me as Commissioner, I issue this Cease-and-Desist Order and Notice of Fine based on the following, to wit:

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relation to a claim for benefits, which was erroneously reported as Hurricane Laura in the LDI's C&D of February 17, 2023, the LDI has learned via a complaint filed by counsel retained by the Caffarels that the Caffarels only learned of the fraudulent claim representation when Chase Bank, the mortgage holder and listed payee on the insurance proceeds settlement check, endorsed the check for damages and sent the check to the Caffarels.

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In a separate admission in response to the Order issued by Judge North following the February 1, 2023 hearing, MMA admitted to the Court that it had settled nine (9) claims while MMA did not represent the insureds connected to those claims.

f.

Transcripts obtained [by] the LDI of a court proceeding held on December 13, 2022, before the United States District Court for the Western District of Louisiana, with The Honorable James D. Cain, Jr. presiding, revealed that MMA received and deposited a check, dated August 24, 2022, from "Allstate" representing proceeds from an insurance settlement. The settlement check was made payable to MMA, Mel Addison and Adriana L. Addison (the insureds/homeowners) and Accord Services, Inc. Accord Services, Inc. is listed as the mortgage holder for the property for which the insurance benefits were claimed on and paid. According to the unrefuted testimony by Kermith Sonnier, the owner of Accord Services, Inc., MMA was never given permission to sign the name of Accord Services, Inc. to the settlement check at issue. Mr. Sonnier further testified that he had never spoken with MMA about the check. Representatives of MMA in the proceeding, and specifically William Huye III, did not refute that MMA deposited and retained settlement proceeds payable to Accord Services, Inc. in the hearing, nearly 6 months following the issuance date of the settlement check. A copy of the check at issue reveals an endorsement negotiation, on behalf of Accord Services, Inc., placed onto the back of the check by MMA.

5.

Insurance is an industry affected with the public interest and it is the purpose of the Louisiana Insurance Code to regulate that industry in all its phases. It is the duty of the Commissioner of Insurance to administer the provisions of the Louisiana Insurance Code, which includes the statutory provisions referenced herein. The Department of Insurance (LDI) is an agency of the executive branch of state government allocated functions, powers, duties and responsibilities by the Louisiana State Constitution and as provided by statutory law. The Office of Insurance Fraud created within the LDI is mandated by state law to investigate fraudulent insurance acts and other violations of the insurance laws of this State. The Commissioner of Insurance serves as the executive head and chief administrative officer of the LDI and is both empowered and entrusted with the responsibility for the operation of the functions of the LDI in the interest of and representation of the public to the extent provided by state law—including administering the provisions of the Louisiana Insurance Code. Part IV. Unfair Trade Practices of

the Louisiana Insurance Code defines and provides for the determination by the Commissioner of all acts, methods of competition and unfair or deceptive acts and practices within the industry of insurance by all persons, natural or artificial, in this State and provides for the enforcement penalties for violation of such acts, which includes prohibited acts affecting the business of insurance.

**6.**

Having found by MMA's own admissions that MMA has engaged in acts or practices in violation of the Louisiana Insurance Code, investigative proceedings were commenced by the LDI's Office of Insurance Fraud (hereafter "LDI") into the practices of MMA in the business of insurance within the state of Louisiana.

**7.**

The LDI interviewed at least 43 of the 856 Louisiana insureds and/or homeowners (collectively "consumers") that MMA purported to have been retained to represent. The 43 Louisiana consumers interviewed consistently stated that MMA represented them regarding their property damage claims without their consent.

**8.**

MMA, who knowingly and with the intent to defraud, presented, to Louisiana insurers, letters of representation and written statements in support of claims for payment, or other benefits available under policies of insurance, while knowing that MMA's representations contained materially false and/or misleading information concerning MMA having been retained by the specifically named insureds.

**9.**

The LDI has obtained notarized statements, from Louisiana consumers, attesting to deceptive acts or practices related to false and/or misleading representations made by MMA. MMA's deceptive acts or practices were orchestrated with MMA's full knowledge and intent to deceive Louisiana insurers, and consumers, for the purpose of unlawfully retaining legal fees, diverting claim proceeds, or other policy benefits, owed to or by the defrauded parties.

**10.**

According to sworn testimony and other evidence in the possession of the LDI, the scheme or artifice to defraud Louisiana insurers and consumers included, but may not be limited to, the following:

**a.**

APEX contacted the Louisiana consumer, often at their residence, where the consumer consented to APEX's evaluation of the consumer's roof for potential damage.

**b.**

Louisiana consumers signed documents, at the request of APEX, wherein consumers were led to believe that the forms executed allowed APEX to evaluate the consumer's need for a claim and/or file a claim with the consumer's insurer, relative to roof damage, via an assignment of the consumer's insurance benefit to APEX.

c.

Consumers did not understand that a law firm, and specifically MMA, was being retained by the Louisiana consumer to represent them by assigning their insurance benefits to APEX. Further, to the extent that any consumer was aware of the potential involvement of an attorney, consumers were led to believe that the extent of their financial obligation, associated to the claim presented for roof damage, would not exceed the consumer's deductible.

d.

After assigning the consumers' insurance benefits to APEX, APEX executed an attorney employment contract purportedly between the consumer and MMA. This contract was entered into without the consumers' knowledge or consent. Thereafter, either APEX or MMA ordered an estimate of the damages related to the property claim resulting in an increased expense against the insurance claims settlement proceeds, reducing the settlement proceeds available to the consumer, when APEX should have been able to present MMA, as APEX's counsel, an estimate of the damages that allowed MMA to pursue APEX's interest.

e.

MMA sent letters of representation, in support of the consumers' claims for payment, to Louisiana insurers, purporting to have been retained by Louisiana insureds, without the insureds' knowledge and consent. In many instances, MMA, who was retained by APEX to recover roofing damage through an assignment of benefits, exceeded the scope for which APEX was retained by the consumer.

f.

Following a hearing on February 1, 2023, in the United States District Court for the Eastern District of Louisiana, where MMA was challenged by The Honorable Michael B. North as to who the firm represented in the matter before the court, MMA issued a "Clarification of Previous Letter of Representation", which stated in pertinent part, "McClenny Moseley and Associates, PLLC does not represent your insured in this matter".

g.

MMA, through their letters of representation, directed Louisiana insurers to send correspondence via electronic transmission to MMA. MMA's letter of representation forced insurers, who understood the legal implications of speaking with a party represented by legal counsel without consent, to communicate directly

with MMA. This prevented Louisiana consumers from gaining knowledge that insurance claims were being made on their behalf, that settlement discussions were ongoing between the involved Louisiana insurers and MMA, and that insurance settlement proceeds belonging to Louisiana consumers were being disbursed to MMA.

h.

MMA continued its fraudulent representation, which included sending demands for payment to Louisiana insurers and negotiating claims settlements, until either a Louisiana insurer issued insurance claim settlement proceeds to MMA, without the insured's knowledge and consent, or MMA was requested to withdraw their representation by the consumer.

i.

In one instance, MMA filed a lawsuit against a Louisiana insurer for a consumer they purported to represent, without the consent or authority to do so.

j.

According to admissions made by William Huye III to the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, Mr. Huye admitted that a "Settlement Breakdown", which included a Power of Attorney authorizing MMA to endorse settlement proceeds on behalf of Louisiana consumers, was sent to APEX for presentation and execution by the insured party. The "Settlement Breakdown" included an offset against the insurance settlement proceeds for legal services rendered by MMA and expenses MMA incurred in their presentation of the claim to Louisiana insurers, neither of which were authorized by consumers at the time the legal services were rendered or expenses incurred.

k.

The LDI continues to develop evidence related to the factual occurrences beyond the execution of the Settlement Breakdown, which includes a Power of Attorney. However, consumers have expressed the inability to access insurance settlement proceeds diverted via MMA's fraudulent representation, which totals over \$185,000.00 for consumers who provided the LDI with sworn statements.

**11.**

According to their testimonies, Louisiana consumers discovered that they were being represented by MMA upon settlement of their claims, upon calling the insurance company to determine the status of their claims, or after being contacted by representatives of MMA by email or telephone. When Louisiana consumers and/or insurers challenged MMA relative to their

fraudulent legal representation of Louisiana consumers, MMA forwarded letters of withdrawal of representation to the Louisiana consumers and insurers without any significant response to the challenges regarding their representation.

**12.**

The Commissioner has found that Louisiana consumers were unaware of the scheme or artifice referenced herein, however; MMA, being trained in the practice of law and understanding the legal implications and repercussions once a letter of representation had been sent to Louisiana Insurers, had full knowledge that sending a letter of representation would veil MMA's scheme from both Louisiana insurers and consumers, until a time of MMA's choosing, and in some instances, a time when consumers were most vulnerable. The false representations of having been retained as legal counsel on behalf of Louisiana consumers was the vehicle or artifice necessary to bring about, and keep hidden, the fraudulent practices of MMA.

**13.**

The Commissioner is in possession of credible evidence to support that MMA knowingly intended, from, at the latest, the inception of its purported letters of representation, to keep the Louisiana consumers and Louisiana insurers unaware of MMA's surreptitious plan to divert insurance claim proceeds to their benefit. In doing so, MMA deceived both the insureds and insurers and not only diverted insurance proceeds, but in some instances, collected a predatory professional services fee, representing between 10.0% and 33.3% of the insurance settlement proceeds, a fee MMA would not have received without the employment of the scheme.

**14.**

At least 43 Louisiana consumers, and 25 of those while under oath, have testified that the consumers had no intent to hire an attorney to represent them and had no knowledge of MMA's representation. After interviewing a small sample of the 856 consumers where MMA admitted to having made the misrepresentations, the LDI has obtained at least 39 letters of representation issued by MMA and finds the transmission of the letters to Louisiana insurers to be a fraudulent insurance act. The letters of representation, in pertinent parts, states:

"Please be advised that McClenny Moseley & Associates PLLC has been retained by [Specifically named Louisiana consumer] (hereafter "Client") as legal counsel for their above referenced insurance claim. Effective immediately, please direct all communications to [claims@mma-pllc.com](mailto:claims@mma-pllc.com)."

"This notice shall also serve as our Client's formal notice that our Client, through undersigned counsel, is making a claim for all coverages available under the Policy and request that you start their claim."

"In addition to the above, this letter serves as a notice that McClenny Moseley & Associates' representation relates to any and all claims made by our Client regarding their above referenced loss and property located at the address listed above."

“Accordingly, as it relates to our Client, the specified location and claim, or any other related property or claim for insurance proceeds, please conduct your communication under the conditions specified above, with payments made accordingly. **This requires that McClenny Moseley & Associates, PLLC be listed as a payee on any payment or draft made from this point forward.**” (Emphases added by MMA and not the LDI)

“Please note, although the property will be made available for inspection, our Client will not be made available for questioning during the property inspection and any communication with our Client is strictly prohibited.”

“Our client requests that you extend the professional courtesy of sending all correspondence, document production, etc. via email to [claims@mma-pll.com](mailto:claims@mma-pll.com). **Our Client has a strong preference to correspond via email to ensure clear and timely responses.**” (Emphases added by MMA and not the LDI)

Combined with the presentation of 32 demands to Louisiana insurers, invoking the appraisal provision of the policy in four instances, and positioning MMA to receive 15 insurance proceed checks, ten of which were negotiated and all without authority to represent the consumer, MMA engaged in at least 90 fraudulent insurance acts.

## **APPLICABLE LAW**

### **15.**

#### **§2. Insurance regulated in the public interest**

A. (1) Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases....[I]t shall be the duty of the commissioner of insurance to administer the provisions of this Code.

La. R.S. 22:1923 maintains in pertinent part:

#### **§ 1923. Definitions**

(2) “Fraudulent insurance act” shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, producer, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:

(iii) A claim for payment or benefit pursuant to any insurance policy.

- (d) Diverts, attempts to divert, or conspires to divert funds of an insurer, reinsurer, or other entity regulated under the laws of this state, or other persons in connection with:
  - (ii) The conduct of business activities by an insurer, reinsurer, or other entity regulated by the insurance laws of this state.
- (m) Receives money or any other thing of value from any person, firm, or entity as a means of compensation for the acts of solicitation or criminal conspiracy done for the purpose of executing a scheme or artifice to defraud a person.

La. R.S. 22:1924 maintains in pertinent part:

**§ 1924 Prohibited activities and sanctions**

- A. (1) (a) Any person who, with the intent to injure, defraud, or deceive any insurance company, or the Department of Insurance, or any insured or other party in interest, or any third-party claimant commits any of the acts specified in Paragraph (2) or (3) of this Subsection is guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed five thousand dollars, or both, on each count.

(b) In addition to the criminal penalties provided in Subparagraph (a) of this Paragraph, the defendant shall make payment of restitution to the victim or victim company of any insurance payments to the defendant that the court determines were not owed and the costs incurred by the victim or victim company associated with the evaluation and defense of the fraudulent claim, including but not limited to the investigative costs, attorney fees, and court costs. However, if the amount of the benefit that is the subject of the criminal act does not exceed one thousand dollars, the term of imprisonment shall not exceed six months, and any fine shall not exceed one thousand dollars on each count.

(2) The following acts shall be punishable as provided in Paragraph (1) of this Subsection:

- (a) Committing any fraudulent insurance act as defined in R.S. 22:1923.
- (c) Assisting, abetting, soliciting, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to any insurance company, insured, the Department of Insurance, or other party in interest or third-party claimant in connection with, or in support of or denial, or any claim for payment of other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information, concerning any fact or thing material to such claim or insurance policy.

La. R.S. 22:1963 maintains in pertinent part:

**§1963. Unfair methods and unfair or deceptive acts and practices prohibited**

No person shall engage in this state in any trade practice which is defined in this Part to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of the business of insurance, including unauthorized insurance as provided in R.S. 22:1902 et seq. or

the failure to maintain professional liability insurance, if such coverage is required pursuant to R.S. 22:1570.1.

La. R.S. 22:1964 maintains in pertinent part:

**§ 1964. Methods, acts, and practices which are defined as unfair or deceptive**

The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(12) Any violation of any prohibitory law of this state.

(13) Fraudulent insurance act. A fraudulent insurance act is one committed by a person who knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, producer, or any agent thereof, any written statement as part of, or in support of, or in opposition to an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceal for the purpose of misleading information concerning any fact material thereto.

**§1967. Power of commissioner of insurance**

The commissioner of insurance shall have power to examine and investigate the affairs of every person engaged in the business of insurance, including violations of R.S. 22:1902 et seq., in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this Part.

**§1968. Notice of hearing**

Whenever the commissioner shall have reason to believe that any person has been engaged or is engaging in this state in any unfair trade practice as defined in this Code, whether or not defined in this Part, the commissioner shall issue a notice of wrongful conduct to said person in accordance and compliance with R.S. 49:961 describing the unfair trade practice and citing the law which is deemed by the commissioner to be violated.

La. R.S. 22:1969 maintains in pertinent part:

**§1969. Violations, penalties**

- A. If, after receiving the person's answer or response or if no answer or response is received within twenty days of receipt of mailing, faxing, or delivery of the notice, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his findings to writing and shall issue and cause to be served upon the person



charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice and order any one or more of the following:

(1) Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars unless the person knew or reasonably should have known he was in violation of this Part, in which case the penalty shall be not more than twenty-five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of five hundred thousand dollars in any six-month period

(2) Suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of this Part.

### CONCLUSIONS OF LAW

#### 16.

The Commissioner, based on the facts presented, has found James McClenny in violation of multiple provisions set out in Title 22, specifically La. R.S. 22:1924(A)(1)(a), and (2)(a) and (c) as defined by La. R.S. 22:1923, in addition to unfair trade practices under Louisiana Insurance Code, specifically La. R.S. 22:1964 (12) and (13).

#### 17.

### COMMISSIONER'S ACTION

As a result of the investigation and documentation in possession of the LDI, the LDI has determined that emergency action is required to protect the public health, safety, and welfare, and the Louisiana Commissioner of Insurance hereby orders **James McClenny**, in accordance with La. R.S. 22:1969, to **CEASE AND DESIST** from the activity and the violations of law stated above.

In addition, in accordance with La. R.S. 22:1969, the Commissioner hereby fines **James McClenny**, in the amount of **\$500,000.00**.

#### 18.

### YOUR ACTION

Please remit your **\$500,000.00** fine payment and a copy of this notice to:

Louisiana Department of Insurance  
Attention: Accounts Receivable  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

Pursuant to La. R.S. 22:2191(A)(2), any person aggrieved by an act of the Commissioner may request a hearing. You must make a written demand for an appeal within thirty (30) days from the date of this notice. Failure to file a written demand for an appeal within thirty (30) days from this notice will preclude your right to an administrative hearing.

Pursuant to La. R.S. 22:2191(B), your written demand for an appeal (1) shall reference the particular sections of the statutes and rules involved; (2) shall provide a short and plain statement of the matters asserted for review; and (3) shall attach a copy of the order or decision that you are appealing. Appealing this notice does not stay the action of the Commissioner of Insurance. Pursuant to La. R.S. 22:2204, you must request and be granted a stay of this action by the Division of Administrative Law. Your request for a stay may be included in your appeal. Your written demand for an appeal shall be filed with the Louisiana Department of Insurance at the addresses below:

Louisiana Department of Insurance  
Attn: J. David Caldwell, Executive Counsel  
P. O. Box 94214  
Baton Rouge, LA 70804-9214

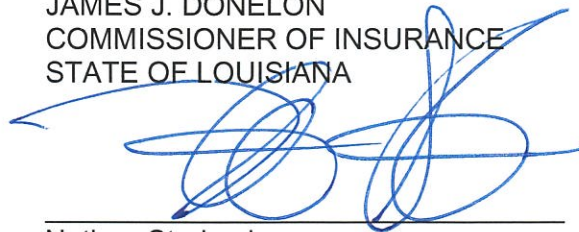
Telephone: (225) 342-4673  
Fax: (225) 342-1632

File in Person at:

1702 N. Third Street  
Baton Rouge, LA 70802

Signed in Baton Rouge, Louisiana this 1<sup>st</sup> day of May 2023.

JAMES J. DONELON  
COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA



BY:

Nathan Strebeck  
Deputy Commissioner  
Office of Insurance Fraud  
Louisiana Department of Insurance  
Telephone: (225) 219-5819

**CERTIFICATE OF SERVICE**

**Article # 9589 0710 5270 0160 8403 76**

**Article # 9589 0710 5270 0160 8403 69**

I hereby certify that I have this day served the foregoing document upon James McClenny by mailing a copy thereof properly addressed with postage prepaid, this 1<sup>st</sup> of May 2023.

Takiyah Banks  
Printed Name

Takiyah Banks  
Signature



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

### CEASE AND DESIST ORDER AND NOTICE OF FINE

May 1, 2023

TO: John Moseley, Esq. Article # 9589 0710 5270 0160 8404 13  
McClenny Moseley & Associates, PLLC  
1415 Louisiana Street, Ste. 2900  
Houston, Texas 77002

John Moseley, Esq. Article # 9589 0710 5270 0160 8404 06  
4018 Meadow Lake LN.  
Houston, TX 77027

Via Email: [Zach@mma-pll.com](mailto:Zach@mma-pll.com)

WHEREAS, IT HAS COME TO MY ATTENTION, as Commissioner of Insurance (Commissioner) of the Louisiana Department of Insurance (“LDI” and/or “Department”), that McClenny Moseley & Associates, PLLC, William Huye III, John Moseley and James McClenny, as managing partners and/or members of McClenny Moseley & Associates, PLLC, have violated certain provisions of the Louisiana Insurance Code, Title 22, La. R.S. 22:1 et seq. Accordingly, pursuant to the power and authority vested in me as Commissioner, I issue this Cease-and-Desist Order and Notice of Fine based on the following, to wit:

#### **FINDINGS OF FACT**

##### **1.**

McClenny Moseley & Associates, PLLC, is a Texas domiciled professional limited liability company, and law firm. McClenny Moseley & Associates, PLLC registered with the Louisiana Secretary of State on October 26, 2020, with its registered office in Louisiana located at 1820 St. Charles Avenue, Suite 110, New Orleans, LA 70130. Its registered agent is William Huye, by appointment dated June 2, 2022, and officers include managing members James McClenny and John Moseley. The business registration for McClenny Moseley & Associates, PLLC was revoked on March 15, 2023, by the Louisiana Secretary of State. According to LDI records, McClenny Moseley & Associates, PLLC is not licensed to participate in the business of insurance in any way that a license issued by the LDI is required.

##### **2.**

Apex Roofing and Restoration L.L.C. (hereinafter referred to as “APEX”) is an Alabama domiciled limited liability company, and Louisiana licensed contractor, representing and marketing itself as a roofing company providing storm restoration services. APEX is registered with the Louisiana Secretary of State with its principal business establishment in Louisiana located at 1 Galleria Blvd, Suite 1900, Metairie, LA 70001. According to LDI records, APEX is not licensed to participate in the business of insurance in any way that a license issued by the LDI is required.

3.

The LDI has evidence that McClenny Moseley & Associates, PLLC, and its principals, managers and/or partners Richard William Huye III, John Moseley and James McClenny (collectively referred to herein as "MMA") participated in a fraudulent scheme and/or trade practice constituting unfair methods of competition and unfair or deceptive acts and practices in this State within the business of insurance.

4.

On February 17, 2023, the Commissioner issued a Cease-and-Desist Order and Notice of Wrongful Conduct and Notice of Investigative Proceedings to MMA having found, and incorporates as findings, each of the following:

a.

MMA, in connection with a contractual arrangement between MMA and APEX, fraudulently misrepresented to multiple Louisiana insurance companies that MMA had been retained by Louisiana insureds as their attorney and/or legal counsel related to the settlement of hurricane related insurance claims without the knowledge of the insureds MMA purported to represent.

b.

MMA admitted to, according to a transcript of the court proceeding held on February 1, 2023, by the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, having sent letters of representation to insurance companies on behalf of insureds, while MMA did not represent those insureds, but rather represented APEX. During the proceeding, when questioned by the Judge, MMA admitted to filing one lawsuit and settling eleven (11) claims on behalf of insureds without the insureds' knowledge and consent.

c.

On February 13, 2023, via written responses to Orders issued by the Honorable Michael B. North, MMA admitted to 856 misrepresentations to Louisiana insurers that MMA was retained by the insureds/homeowners, when in fact MMA did not represent those insureds/homeowners relative to claims for payment and benefits under those insurance policies.

d.

In one of the 856 files, wherein MMA admitted to misrepresenting themselves to have been retained by insureds Michael and Holly Caffarel, in relation to a claim for benefits, which was erroneously reported as Hurricane Laura in the LDI's C&D of February 17, 2023, the LDI has learned via a complaint filed by counsel retained by the Caffarels that the Caffarels only learned of the

fraudulent claim representation when Chase Bank, the mortgage holder and listed payee on the insurance proceeds settlement check, endorsed the check for damages and sent the check to the Caffarels.

e.

In a separate admission in response to the Order issued by Judge North following the February 1, 2023 hearing, MMA admitted to the Court that it had settled nine (9) claims while MMA did not represent the insureds connected to those claims.

f.

Transcripts obtained [by] the LDI of a court proceeding held on December 13, 2022, before the United States District Court for the Western District of Louisiana, with The Honorable James D. Cain, Jr. presiding, revealed that MMA received and deposited a check, dated August 24, 2022, from "Allstate" representing proceeds from an insurance settlement. The settlement check was made payable to MMA, Mel Addison and Adriana L. Addison (the insureds/homeowners) and Accord Services, Inc. Accord Services, Inc. is listed as the mortgage holder for the property for which the insurance benefits were claimed on and paid. According to the unrefuted testimony by Kermith Sonnier, the owner of Accord Services, Inc., MMA was never given permission to sign the name of Accord Services, Inc. to the settlement check at issue. Mr. Sonnier further testified that he had never spoken with MMA about the check. Representatives of MMA in the proceeding, and specifically William Huye III, did not refute that MMA deposited and retained settlement proceeds payable to Accord Services, Inc. in the hearing, nearly 6 months following the issuance date of the settlement check. A copy of the check at issue reveals an endorsement negotiation, on behalf of Accord Services, Inc., placed onto the back of the check by MMA.

5.

Insurance is an industry affected with the public interest and it is the purpose of the Louisiana Insurance Code to regulate that industry in all its phases. It is the duty of the Commissioner of Insurance to administer the provisions of the Louisiana Insurance Code, which includes the statutory provisions referenced herein. The Department of Insurance (LDI) is an agency of the executive branch of state government allocated functions, powers, duties and responsibilities by the Louisiana State Constitution and as provided by statutory law. The Office of Insurance Fraud created within the LDI is mandated by state law to investigate fraudulent insurance acts and other violations of the insurance laws of this State. The Commissioner of Insurance serves as the executive head and chief administrative officer of the LDI and is both empowered and entrusted with the responsibility for the operation of the functions of the LDI in the interest of and representation of the public to the extent provided by state law—including administering the provisions of the Louisiana Insurance Code. Part IV. Unfair Trade Practices of the Louisiana Insurance Code defines and provides for the determination by the Commissioner of all acts, methods of competition and unfair or deceptive acts and practices within the industry of insurance by all persons, natural or artificial, in this State and provides for the enforcement

penalties for violation of such acts, which includes prohibited acts affecting the business of insurance.

**6.**

Having found by MMA's own admissions that MMA has engaged in acts or practices in violation of the Louisiana Insurance Code, investigative proceedings were commenced by the LDI's Office of Insurance Fraud (hereafter "LDI") into the practices of MMA in the business of insurance within the state of Louisiana.

**7.**

The LDI interviewed at least 43 of the 856 Louisiana insureds and/or homeowners (collectively "consumers") that MMA purported to have been retained to represent. The 43 Louisiana consumers interviewed consistently stated that MMA represented them regarding their property damage claims without their consent.

**8.**

MMA, who knowingly and with the intent to defraud, presented, to Louisiana insurers, letters of representation and written statements in support of claims for payment, or other benefits available under policies of insurance, while knowing that MMA's representations contained materially false and/or misleading information concerning MMA having been retained by the specifically named insureds.

**9.**

The LDI has obtained notarized statements, from Louisiana consumers, attesting to deceptive acts or practices related to false and/or misleading representations made by MMA. MMA's deceptive acts or practices were orchestrated with MMA's full knowledge and intent to deceive Louisiana insurers, and consumers, for the purpose of unlawfully retaining legal fees, diverting claim proceeds, or other policy benefits, owed to or by the defrauded parties.

**10.**

According to sworn testimony and other evidence in the possession of the LDI, the scheme or artifice to defraud Louisiana insurers and consumers included, but may not be limited to, the following:

**a.**

APEX contacted the Louisiana consumer, often at their residence, where the consumer consented to APEX's evaluation of the consumer's roof for potential damage.

b.

Louisiana consumers signed documents, at the request of APEX, wherein consumers were led to believe that the forms executed allowed APEX to evaluate the consumer's need for a claim and/or file a claim with the consumer's insurer, relative to roof damage, via an assignment of the consumer's insurance benefit to APEX.

c.

Consumers did not understand that a law firm, and specifically MMA, was being retained by the Louisiana consumer to represent them by assigning their insurance benefits to APEX. Further, to the extent that any consumer was aware of the potential involvement of an attorney, consumers were led to believe that the extent of their financial obligation, associated to the claim presented for roof damage, would not exceed the consumer's deductible.

d.

After assigning the consumers' insurance benefits to APEX, APEX executed an attorney employment contract purportedly between the consumer and MMA. This contract was entered into without the consumers' knowledge or consent. Thereafter, either APEX or MMA ordered an estimate of the damages related to the property claim resulting in an increased expense against the insurance claims settlement proceeds, reducing the settlement proceeds available to the consumer, when APEX should have been able to present MMA, as APEX's counsel, an estimate of the damages that allowed MMA to pursue APEX's interest.

e.

MMA sent letters of representation, in support of the consumers' claims for payment, to Louisiana insurers, purporting to have been retained by Louisiana insureds, without the insureds' knowledge and consent. In many instances, MMA, who was retained by APEX to recover roofing damage through an assignment of benefits, exceeded the scope for which APEX was retained by the consumer.

f.

Following a hearing on February 1, 2023, in the United States District Court for the Eastern District of Louisiana, where MMA was challenged by The Honorable Michael B. North as to who the firm represented in the matter before the court, MMA issued a "Clarification of Previous Letter of Representation", which stated in pertinent part, "McClenny Moseley and Associates, PLLC does not represent your insured in this matter".

g.

MMA, through their letters of representation, directed Louisiana insurers to send correspondence via electronic transmission to MMA. MMA's letter of representation forced insurers, who understood the legal implications of speaking



with a party represented by legal counsel without consent, to communicate directly with MMA. This prevented Louisiana consumers from gaining knowledge that insurance claims were being made on their behalf, that settlement discussions were ongoing between the involved Louisiana insurers and MMA, and that insurance settlement proceeds belonging to Louisiana consumers were being disbursed to MMA.

h.

MMA continued its fraudulent representation, which included sending demands for payment to Louisiana insurers and negotiating claims settlements, until either a Louisiana insurer issued insurance claim settlement proceeds to MMA, without the insured's knowledge and consent, or MMA was requested to withdraw their representation by the consumer.

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In one instance, MMA filed a lawsuit against a Louisiana insurer, for a consumer they purported to represent, without the consent or authority to do so.

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According to admissions made by William Huye III to the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, Mr. Huye admitted that a "Settlement Breakdown", which included a Power of Attorney authorizing MMA to endorse settlement proceeds on behalf of Louisiana consumers, was sent to APEX for presentation and execution by the insured party. The "Settlement Breakdown" included an offset against the insurance settlement proceeds for legal services rendered by MMA and expenses MMA incurred in their presentation of the claim to Louisiana insurers, neither of which were authorized by consumers at the time the legal services were rendered or expenses incurred.

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The LDI continues to develop evidence related to the factual occurrences beyond the execution of the Settlement Breakdown, which includes a Power of Attorney. However, consumers have expressed the inability to access insurance settlement proceeds diverted via MMA's fraudulent representation, which totals over \$185,000.00 for consumers who provided the LDI with sworn statements.

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According to their testimonies, Louisiana consumers discovered that they were being represented by MMA upon settlement of their claims, upon calling the insurance company to determine the status of their claims, or after being contacted by representatives of MMA by email or telephone. When Louisiana consumers and/or insurers challenged MMA relative to their fraudulent legal representation of Louisiana consumers, MMA forwarded letters of withdrawal of

representation to the Louisiana consumers and insurers without any significant response to the challenges regarding their representation.

**12.**

The Commissioner has found that Louisiana consumers were unaware of the scheme or artifice referenced herein, however; MMA, being trained in the practice of law and understanding the legal implications and repercussions once a letter of representation had been sent to Louisiana Insurers, had full knowledge that sending a letter of representation would veil MMA's scheme from both Louisiana insurers and consumers, until a time of MMA's choosing, and in some instances, a time when consumers were most vulnerable. The false representations of having been retained as legal counsel on behalf of Louisiana consumers was the vehicle or artifice necessary to bring about, and keep hidden, the fraudulent practices of MMA.

**13.**

The Commissioner is in possession of credible evidence to support that MMA knowingly intended, from, at the latest, the inception of its purported letters of representation, to keep the Louisiana consumers and Louisiana insurers unaware of MMA's surreptitious plan to divert insurance claim proceeds to their benefit. In doing so, MMA deceived both the insureds and insurers and not only diverted insurance proceeds, but in some instances, collected a predatory professional services fee, representing between 10.0% and 33.3% of the insurance settlement proceeds, a fee MMA would not have received without the employment of the scheme.

**14.**

At least 43 Louisiana consumers, and 25 of those while under oath, have testified that the consumers had no intent to hire an attorney to represent them and had no knowledge of MMA's representation. After interviewing a small sample of the 856 consumers where MMA admitted to having made the misrepresentations, the LDI has obtained at least 39 letters of representation issued by MMA and finds the transmission of the letters to Louisiana insurers to be a fraudulent insurance act. The letters of representation, in pertinent parts, states:

"Please be advised that McClenny Moseley & Associates PLLC has been retained by [Specifically named Louisiana consumer] (hereafter "Client") as legal counsel for their above referenced insurance claim. Effective immediately, please direct all communications to [claims@mma-pllc.com](mailto:claims@mma-pllc.com)."

"This notice shall also serve as our Client's formal notice that our Client, through undersigned counsel, is making a claim for all coverages available under the Policy and request that you start their claim."

"In addition to the above, this letter serves as a notice that McClenny Moseley & Associates' representation relates to any and all claims made by our Client regarding their above referenced loss and property located at the address listed above."

"Accordingly, as it relates to our Client, the specified location and claim, or any other related property or claim for insurance proceeds, please conduct your

communication under the conditions specified above, with payments made accordingly. **This requires that McClenny Moseley & Associates, PLLC be listed as a payee on any payment or draft made from this point forward.** (Emphases added by MMA and not the LDI)

"Please note, although the property will be made available for inspection, our Client will not be made available for questioning during the property inspection and any communication with our Client is strictly prohibited."

"Our client requests that you extend the professional courtesy of sending all correspondence, document production, etc. via email to [claims@mma-llc.com](mailto:claims@mma-llc.com). **Our Client has a strong preference to correspond via email to ensure clear and timely responses.**" (Emphases added by MMA and not the LDI)

Combined with the presentation of 32 demands to Louisiana insurers, invoking the appraisal provision of the policy in four instances, and positioning MMA to receive 15 insurance proceed checks, ten of which were negotiated and all without authority to represent the consumer, MMA engaged in at least 90 fraudulent insurance acts.

## APPLICABLE LAW

### 15.

#### **§2. Insurance regulated in the public interest**

A. (1) Insurance is an industry affected with the public interest and it is the purpose of this Code to regulate that industry in all its phases....[I]t shall be the duty of the commissioner of insurance to administer the provisions of this Code.

La. R.S. 22:1923 maintains in pertinent part:

#### **§ 1923. Definitions**

(2) "Fraudulent insurance act" shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:

(a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, producer, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:

(iii) A claim for payment or benefit pursuant to any insurance policy.

(d) Diverts, attempts to divert, or conspires to divert funds of an insurer, reinsurer, or other entity regulated under the laws of this state, or other persons in connection with:

- (ii) The conduct of business activities by an insurer, reinsurer, or other entity regulated by the insurance laws of this state.
- (m) Receives money or any other thing of value from any person, firm, or entity as a means of compensation for the acts of solicitation or criminal conspiracy done for the purpose of executing a scheme or artifice to defraud a person.

La. R.S. 22:1924 maintains in pertinent part:

**§ 1924 Prohibited activities and sanctions**

- A. (1)(a) Any person who, with the intent to injure, defraud, or deceive any insurance company, or the Department of Insurance, or any insured or other party in interest, or any third-party claimant commits any of the acts specified in Paragraph (2) or (3) of this Subsection is guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed five thousand dollars, or both, on each count.

(b) In addition to the criminal penalties provided in Subparagraph (a) of this Paragraph, the defendant shall make payment of restitution to the victim or victim company of any insurance payments to the defendant that the court determines were not owed and the costs incurred by the victim or victim company associated with the evaluation and defense of the fraudulent claim, including but not limited to the investigative costs, attorney fees, and court costs. However, if the amount of the benefit that is the subject of the criminal act does not exceed one thousand dollars, the term of imprisonment shall not exceed six months, and any fine shall not exceed one thousand dollars on each count.

(2) The following acts shall be punishable as provided in Paragraph (1) of this Subsection:

- (a) Committing any fraudulent insurance act as defined in R.S. 22:1923.
- (c) Assisting, abetting, soliciting, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to any insurance company, insured, the Department of Insurance, or other party in interest or third-party claimant in connection with, or in support of or denial, or any claim for payment of other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information, concerning any fact or thing material to such claim or insurance policy.

La. R.S. 22:1963 maintains in pertinent part:

**§1963. Unfair methods and unfair or deceptive acts and practices prohibited**

No person shall engage in this state in any trade practice which is defined in this Part to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of the business of insurance, including unauthorized insurance as provided in R.S. 22:1902 et seq. or the failure to maintain professional liability insurance, if such coverage is required pursuant to R.S. 22:1570.1.

La. R.S. 22:1964 maintains in pertinent part:

**§ 1964. Methods, acts, and practices which are defined as unfair or deceptive**

The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(12) Any violation of any prohibitory law of this state.

(13) Fraudulent insurance act. A fraudulent insurance act is one committed by a person who knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, producer, or any agent thereof, any written statement as part of, or in support of, or in opposition to an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceal for the purpose of misleading information concerning any fact material thereto.

**§1967. Power of commissioner of insurance**

The commissioner of insurance shall have power to examine and investigate the affairs of every person engaged in the business of insurance, including violations of R.S. 22:1902 et seq., in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this Part.

**§1968. Notice of hearing**

Whenever the commissioner shall have reason to believe that any person has been engaged or is engaging in this state in any unfair trade practice as defined in this Code, whether or not defined in this Part, the commissioner shall issue a notice of wrongful conduct to said person in accordance and compliance with R.S. 49:961 describing the unfair trade practice and citing the law which is deemed by the commissioner to be violated.

La. R.S. 22:1969 maintains in pertinent part:

**§1969. Violations, penalties**

- A. If, after receiving the person's answer or response or if no answer or response is received within twenty days of receipt of mailing, faxing, or delivery of the notice, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice and order any one or more of the following:
- (1) Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars unless the person knew or reasonably should have known he was in violation of this Part, in which case the penalty shall be not more than twenty-five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of five hundred thousand dollars in any six-month period
  - (2) Suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of this Part.

**CONCLUSIONS OF LAW**

**16.**

The Commissioner, based on the facts presented, has found **John Moseley** in violation of multiple provisions set out in Title 22, specifically La. R.S. 22:1924(A)(1)(a), and (2)(a) and (c) as defined by La. R.S. 22:1923, in addition to unfair trade practices under Louisiana Insurance Code, specifically La. R.S. 22:1964 (12) and (13).

**17.**

**COMMISSIONER'S ACTION**

As a result of the investigation and documentation in possession of the LDI, the LDI has determined that emergency action is required to protect the public health, safety, and welfare, and the Louisiana Commissioner of Insurance hereby orders **John Moseley**, in accordance with La. R.S. 22:1969, to **CEASE AND DESIST** from the activity and the violations of law stated above.

In addition, in accordance with La. R.S. 22:1969, the Commissioner hereby fines **John Moseley**, in the amount of **\$500,000.00**.

18.

**YOUR ACTION**

Please remit your **\$500,000.00** fine payment and a copy of this notice to:

Louisiana Department of Insurance  
Attention: Accounts Receivable  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

Pursuant to La. R.S. 22:2191(A)(2), any person aggrieved by an act of the Commissioner may request a hearing. You must make a written demand for an appeal within thirty (30) days from the date of this notice. Failure to file a written demand for an appeal within thirty (30) days from this notice will preclude your right to an administrative hearing.

Pursuant to La. R.S. 22:2191(B), your written demand for an appeal (1) shall reference the particular sections of the statutes and rules involved; (2) shall provide a short and plain statement of the matters asserted for review; and (3) shall attach a copy of the order or decision that you are appealing. Appealing this notice does not stay the action of the Commissioner of Insurance. Pursuant to La. R.S. 22:2204, you must request and be granted a stay of this action by the Division of Administrative Law. Your request for a stay may be included in your appeal. Your written demand for an appeal shall be filed with the Louisiana Department of Insurance at the addresses below:

Louisiana Department of Insurance  
Attn: J. David Caldwell, Executive Counsel  
P. O. Box 94214  
Baton Rouge, LA 70804-9214

Telephone: (225) 342-4673  
Fax: (225) 342-1632

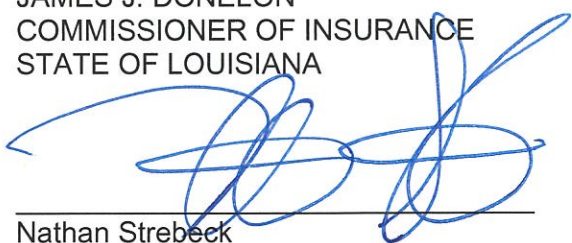
File in Person at:

1702 N. Third Street  
Baton Rouge, LA 70802

Signed in Baton Rouge, Louisiana this 1<sup>st</sup> day of May 2023.

JAMES J. DONELON  
COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA

BY:



\_\_\_\_\_  
Nathan Strebeck  
Deputy Commissioner  
Office of Insurance Fraud  
Louisiana Department of Insurance  
Telephone: (225) 219-5819



**CERTIFICATE OF SERVICE**

**Article # 9589 0710 5270 0160 8404 13**  
**Article # 9589 0710 5270 0160 8404 06**

I hereby certify that I have this day served the foregoing document upon John Moseley by mailing a copy thereof properly addressed with postage prepaid, this 1<sup>st</sup> of May 2023.

Takiyah Banks  
Printed Name

Takiyah Banks  
Signature



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

### CEASE AND DESIST ORDER AND NOTICE OF FINE

May 1, 2023

TO: William Huye, III Article # 9589 0710 5270 0160 8403 83  
McClenny Moseley & Associates, PLLC  
1820 St. Charles Avenue Ste. 110  
New Orleans, LA 70130

William Huye, III Article# 9589 0710 5270 0160 8403 90  
601 6<sup>th</sup> Street  
New Orleans, LA 70115-1025

Via Email: [huyew3@gmail.com](mailto:huyew3@gmail.com)

WHEREAS, IT HAS COME TO MY ATTENTION, as Commissioner of Insurance (Commissioner) of the Louisiana Department of Insurance (“LDI” and/or “Department”), that McClenny Moseley & Associates, PLLC, Richard William Huye III, John Moseley and James McClenny, as managing partners and/or members of McClenny Moseley & Associates, PLLC, have violated certain provisions of the Louisiana Insurance Code, Title 22, La. R.S. 22:1 et seq. Accordingly, pursuant to the power and authority vested in me as Commissioner, I issue this Cease-and-Desist Order and Notice of Fine based on the following, to wit:

#### FINDINGS OF FACT

1.

McClenny Moseley & Associates, PLLC, is a Texas domiciled professional limited liability company, and law firm. McClenny Moseley & Associates, PLLC registered with the Louisiana Secretary of State on October 26, 2020, with its registered office in Louisiana located at 1820 St. Charles Avenue, Suite 110, New Orleans, LA 70130. Its registered agent is William Huye, by appointment dated June 2, 2022, and officers include managing members James McClenny and John Moseley. The business registration for McClenny Moseley & Associates, PLLC was revoked on March 15, 2023, by the Louisiana Secretary of State. According to LDI records, McClenny Moseley & Associates, PLLC is not licensed to participate in the business of insurance in any way that a license issued by the LDI is required.

2.

Apex Roofing and Restoration L.L.C. (hereinafter referred to as “APEX”) is an Alabama domiciled limited liability company, and Louisiana licensed contractor, representing and marketing itself as a roofing company providing storm restoration services. APEX is registered with the Louisiana Secretary of State with its principal business establishment in Louisiana located at 1

Galleria Blvd, Suite 1900, Metairie, LA 70001. According to LDI records, APEX is not licensed to participate in the business of insurance in any way that a license issued by the LDI is required.

3.

The LDI has evidence that McClenny Moseley & Associates, PLLC, and its principals, managers and/or partners Richard William Huye III, John Moseley and James McClenny (collectively referred to herein as "MMA") participated in a fraudulent scheme and/or trade practice constituting unfair methods of competition and unfair or deceptive acts and practices in this State within the business of insurance.

4.

On February 17, 2023, the Commissioner issued a Cease-and-Desist Order and Notice of Wrongful Conduct and Notice of Investigative Proceedings to MMA having found, and incorporates as findings, each of the following:

a.

MMA, in connection with a contractual arrangement between MMA and APEX, fraudulently misrepresented to multiple Louisiana insurance companies that MMA had been retained by Louisiana insureds as their attorney and/or legal counsel related to the settlement of hurricane related insurance claims without the knowledge of the insureds MMA purported to represent.

b.

MMA admitted to, according to a transcript of the court proceeding held on February 1, 2023, by the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, having sent letters of representation to insurance companies on behalf of insureds, while MMA did not represent those insureds, but rather represented APEX. During the proceeding, when questioned by the Judge, MMA admitted to filing one lawsuit and settling eleven (11) claims on behalf of insureds without the insureds' knowledge and consent.

c.

On February 13, 2023, via written responses to Orders issued by the Honorable Michael B. North, MMA admitted to 856 misrepresentations to Louisiana insurers that MMA was retained by the insureds/homeowners, when in fact MMA did not represent those insureds/homeowners relative to claims for payment and benefits under those insurance policies.

d.

In one of the 856 files, wherein MMA admitted to misrepresenting themselves to have been retained by insureds Michael and Holly Caffarel, in relation to a claim for benefits, which was erroneously reported as Hurricane Laura

in the LDI's C&D of February 17, 2023, the LDI has learned via a complaint filed by counsel retained by the Caffarels that the Caffarels only learned of the fraudulent claim representation when Chase Bank, the mortgage holder and listed payee on the insurance proceeds settlement check, endorsed the check for damages and sent the check to the Caffarels.

e.

In a separate admission in response to the Order issued by Judge North following the February 1, 2023 hearing, MMA admitted to the Court that it had settled nine (9) claims while MMA did not represent the insureds connected to those claims.

f.

Transcripts obtained [by] the LDI of a court proceeding held on December 13, 2022, before the United States District Court for the Western District of Louisiana, with The Honorable James D. Cain, Jr. presiding, revealed that MMA received and deposited a check, dated August 24, 2022, from "Allstate" representing proceeds from an insurance settlement. The settlement check was made payable to MMA, Mel Addison and Adriana L. Addison (the insureds/homeowners) and Accord Services, Inc. Accord Services, Inc. is listed as the mortgage holder for the property for which the insurance benefits were claimed on and paid. According to the unrefuted testimony by Kermith Sonnier, the owner of Accord Services, Inc., MMA was never given permission to sign the name of Accord Services, Inc. to the settlement check at issue. Mr. Sonnier further testified that he had never spoken with MMA about the check. Representatives of MMA in the proceeding, and specifically William Huye III, did not refute that MMA deposited and retained settlement proceeds payable to Accord Services, Inc. in the hearing, nearly 6 months following the issuance date of the settlement check. A copy of the check at issue reveals an endorsement negotiation, on behalf of Accord Services, Inc., placed onto the back of the check by MMA.

5.

Insurance is an industry affected with the public interest and it is the purpose of the Louisiana Insurance Code to regulate that industry in all its phases. It is the duty of the Commissioner of Insurance to administer the provisions of the Louisiana Insurance Code, which includes the statutory provisions referenced herein. The Department of Insurance (LDI) is an agency of the executive branch of state government allocated functions, powers, duties and responsibilities by the Louisiana State Constitution and as provided by statutory law. The Office of Insurance Fraud created within the LDI is mandated by state law to investigate fraudulent insurance acts and other violations of the insurance laws of this State. The Commissioner of Insurance serves as the executive head and chief administrative officer of the LDI and is both empowered and entrusted with the responsibility for the operation of the functions of the LDI in the interest of and representation of the public to the extent provided by state law—including administering the provisions of the Louisiana Insurance Code. Part IV. Unfair Trade Practices of the Louisiana Insurance Code defines and provides for the determination by the Commissioner

of all acts, methods of competition and unfair or deceptive acts and practices within the industry of insurance by all persons, natural or artificial, in this State and provides for the enforcement penalties for violation of such acts, which includes prohibited acts affecting the business of insurance.

**6.**

Having found by MMA's own admissions that MMA has engaged in acts or practices in violation of the Louisiana Insurance Code, investigative proceedings were commenced by the LDI's Office of Insurance Fraud (hereafter "LDI") into the practices of MMA in the business of insurance within the state of Louisiana.

**7.**

The LDI interviewed at least 43 of the 856 Louisiana insureds and/or homeowners (collectively "consumers") that MMA purported to have been retained to represent. The 43 Louisiana consumers interviewed consistently stated that MMA represented them regarding their property damage claims without their consent.

**8.**

MMA, who knowingly and with the intent to defraud, presented, to Louisiana insurers, letters of representation and written statements in support of claims for payment, or other benefits available under policies of insurance, while knowing that MMA's representations contained materially false and/or misleading information concerning MMA having been retained by the specifically named insureds.

**9.**

The LDI has obtained notarized statements, from Louisiana consumers, attesting to deceptive acts or practices related to false and/or misleading representations made by MMA. MMA's deceptive acts or practices were orchestrated with MMA's full knowledge and intent to deceive Louisiana insurers, and consumers, for the purpose of unlawfully retaining legal fees, diverting claim proceeds, or other policy benefits, owed to or by the defrauded parties.

**10.**

According to sworn testimony and other evidence in the possession of the LDI, the scheme or artifice to defraud Louisiana insurers and consumers included, but may not be limited to, the following:

**a.**

APEX contacted the Louisiana consumer, often at their residence, where the consumer consented to APEX's evaluation of the consumer's roof for potential damage.

**b.**

Louisiana consumers signed documents, at the request of APEX, wherein consumers were led to believe that the forms executed allowed APEX to evaluate

the consumer's need for a claim and/or file a claim with the consumer's insurer, relative to roof damage, via an assignment of the consumer's insurance benefit to APEX.

c.

Consumers did not understand that a law firm, and specifically MMA, was being retained by the Louisiana consumer to represent them by assigning their insurance benefits to APEX. Further, to the extent that any consumer was aware of the potential involvement of an attorney, consumers were led to believe that the extent of their financial obligation, associated to the claim presented for roof damage, would not exceed the consumer's deductible.

d.

After assigning the consumers' insurance benefits to APEX, APEX executed an attorney employment contract purportedly between the consumer and MMA. This contract was entered into without the consumers' knowledge or consent. Thereafter, either APEX or MMA ordered an estimate of the damages related to the property claim resulting in an increased expense against the insurance claims settlement proceeds, reducing the settlement proceeds available to the consumer, when APEX should have been able to present MMA, as APEX's counsel, an estimate of the damages that allowed MMA to pursue APEX's interest.

e.

MMA sent letters of representation, in support of the consumers' claims for payment, to Louisiana insurers, purporting to have been retained by Louisiana insureds, without the insureds' knowledge and consent. In many instances, MMA, who was retained by APEX to recover roofing damage through an assignment of benefits, exceeded the scope for which APEX was retained by the consumer.

f.

Following a hearing on February 1, 2023, in the United States District Court for the Eastern District of Louisiana, where MMA was challenged by The Honorable Michael B. North as to who the firm represented in the matter before the court, MMA issued a "Clarification of Previous Letter of Representation", which stated in pertinent part, "McClenny Moseley and Associates, PLLC does not represent your insured in this matter".

g.

MMA, through their letters of representation, directed Louisiana insurers to send correspondence via electronic transmission to MMA. MMA's letter of representation forced insurers, who understood the legal implications of speaking with a party represented by legal counsel without consent, to communicate directly with MMA. This prevented Louisiana consumers from gaining knowledge that insurance claims were being made on their behalf, that settlement discussions

were ongoing between the involved Louisiana insurers and MMA, and that insurance settlement proceeds belonging to Louisiana consumers were being disbursed to MMA.

h.

MMA continued its fraudulent representation, which included sending demands for payment to Louisiana insurers and negotiating claims settlements, until either a Louisiana insurer issued insurance claim settlement proceeds to MMA, without the insured's knowledge and consent, or MMA was requested to withdraw their representation by the consumer.

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In one instance, MMA filed a lawsuit against a Louisiana insurer, for a consumer they purported to represent, without the consent or authority to do so.

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According to admissions made by William Huye III to the United States District Court for the Eastern District of Louisiana, with The Honorable Michael B. North presiding, Mr. Huye admitted that a "Settlement Breakdown", which included a Power of Attorney authorizing MMA to endorse settlement proceeds on behalf of Louisiana consumers, was sent to APEX for presentation and execution by the insured party. The "Settlement Breakdown" included an offset against the insurance settlement proceeds for legal services rendered by MMA and expenses MMA incurred in their presentation of the claim to Louisiana insurers, neither of which were authorized by consumers at the time the legal services were rendered or expenses incurred.

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The LDI continues to develop evidence related to the factual occurrences beyond the execution of the Settlement Breakdown, which includes a Power of Attorney. However, consumers have expressed the inability to access insurance settlement proceeds diverted via MMA's fraudulent representation, which totals over \$185,000.00 for consumers who provided the LDI with sworn statements.

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**13.**

The Commissioner is in possession of credible evidence to support that MMA knowingly intended, from, at the latest, the inception of its purported letters of representation, to keep the Louisiana consumers and Louisiana insurers unaware of MMA's surreptitious plan to divert insurance claim proceeds to their benefit. In doing so, MMA deceived both the insureds and insurers and not only diverted insurance proceeds, but in some instances, collected a predatory professional services fee, representing between 10.0% and 33.3% of the insurance settlement proceeds, a fee MMA would not have received without the employment of the scheme.

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"Please be advised that McClenny Moseley & Associates PLLC has been retained by [Specifically named Louisiana consumer] (hereafter "Client") as legal counsel for their above referenced insurance claim. Effective immediately, please direct all communications to [claims@mma-llc.com](mailto:claims@mma-llc.com)."

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"In addition to the above, this letter serves as a notice that McClenny Moseley & Associates' representation relates to any and all claims made by our Client regarding their above referenced loss and property located at the address listed above."

"Accordingly, as it relates to our Client, the specified location and claim, or any other related property or claim for insurance proceeds, please conduct your communication under the conditions specified above, with payments made



accordingly. **This requires that McClenny Moseley & Associates, PLLC be listed as a payee on any payment or draft made from this point forward.** (Emphases added by MMA and not the LDI)

“Please note, although the property will be made available for inspection, our Client will not be made available for questioning during the property inspection and any communication with our Client is strictly prohibited.”

“Our client requests that you extend the professional courtesy of sending all correspondence, document production, etc. via email to [claims@mma-llc.com](mailto:claims@mma-llc.com). **Our Client has a strong preference to correspond via email to ensure clear and timely responses.**” (Emphases added by MMA and not the LDI)

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## APPLICABLE LAW

### 15.

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La. R.S. 22:1923 maintains in pertinent part:

#### § 1923. Definitions

- (2) “Fraudulent insurance act” shall include but not be limited to acts or omissions committed by any person who, knowingly and with intent to defraud:
- (a) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, reinsurer, purported insurer or reinsurer, producer, or any agent thereof, any oral or written statement which he knows to contain materially false information as part of, or in support of, or denial of, or concerning any fact material to or conceals any information concerning any fact material to the following:
    - (iii) A claim for payment or benefit pursuant to any insurance policy.
  - (d) Diverts, attempts to divert, or conspires to divert funds of an insurer, reinsurer, or other entity regulated under the laws of this state, or other persons in connection with:

- (ii) The conduct of business activities by an insurer, reinsurer, or other entity regulated by the insurance laws of this state.
- (m) Receives money or any other thing of value from any person, firm, or entity as a means of compensation for the acts of solicitation or criminal conspiracy done for the purpose of executing a scheme or artifice to defraud a person.

La. R.S. 22:1924 maintains in pertinent part:

**§ 1924 Prohibited activities and sanctions**

- A. (1)(a) Any person who, with the intent to injure, defraud, or deceive any insurance company, or the Department of Insurance, or any insured or other party in interest, or any third-party claimant commits any of the acts specified in Paragraph (2) or (3) of this Subsection is guilty of a felony and shall be subjected to a term of imprisonment, with or without hard labor, not to exceed five years, or a fine not to exceed five thousand dollars, or both, on each count.

(b) In addition to the criminal penalties provided in Subparagraph (a) of this Paragraph, the defendant shall make payment of restitution to the victim or victim company of any insurance payments to the defendant that the court determines were not owed and the costs incurred by the victim or victim company associated with the evaluation and defense of the fraudulent claim, including but not limited to the investigative costs, attorney fees, and court costs. However, if the amount of the benefit that is the subject of the criminal act does not exceed one thousand dollars, the term of imprisonment shall not exceed six months, and any fine shall not exceed one thousand dollars on each count.

(2) The following acts shall be punishable as provided in Paragraph (1) of this Subsection:

- (a) Committing any fraudulent insurance act as defined in R.S. 22:1923.
- (c) Assisting, abetting, soliciting, or conspiring with another to prepare or make any written or oral statement that is intended to be presented to any insurance company, insured, the Department of Insurance, or other party in interest or third-party claimant in connection with, or in support of or denial, or any claim for payment of other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete, or fraudulent information, concerning any fact or thing material to such claim or insurance policy.

La. R.S. 22:1963 maintains in pertinent part:

**§1963. Unfair methods and unfair or deceptive acts and practices prohibited**

No person shall engage in this state in any trade practice which is defined in this Part to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of the business of insurance, including unauthorized insurance as provided in R.S. 22:1902 et seq. or the failure to maintain professional liability insurance, if such coverage is required pursuant to R.S. 22:1570.1.

La. R.S. 22:1964 maintains in pertinent part:

**§ 1964. Methods, acts, and practices which are defined as unfair or deceptive**

The following are declared to be unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(12) Any violation of any prohibitory law of this state.

(13) Fraudulent insurance act. A fraudulent insurance act is one committed by a person who knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, producer, or any agent thereof, any written statement as part of, or in support of, or in opposition to an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which he knows to contain materially false information concerning any fact material thereto; or conceal for the purpose of misleading information concerning any fact material thereto.

**§1967. Power of commissioner of insurance**

The commissioner of insurance shall have power to examine and investigate the affairs of every person engaged in the business of insurance, including violations of R.S. 22:1902 et seq., in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this Part.

**§1968. Notice of hearing**

Whenever the commissioner shall have reason to believe that any person has been engaged or is engaging in this state in any unfair trade practice as defined in this Code, whether or not defined in this Part, the commissioner shall issue a notice of wrongful conduct to said person in accordance and compliance with R.S. 49:961 describing the unfair trade practice and citing the law which is deemed by the commissioner to be violated.

La. R.S. 22:1969 maintains in pertinent part:

**§1969. Violations, penalties**

- A. If, after receiving the person's answer or response or if no answer or response is received within twenty days of receipt of mailing, faxing, or delivery of the notice, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act, or practice and order any one or more of the following:

(1) Payment of a monetary penalty of not more than one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars unless the person knew or reasonably should have known he was in violation of this Part, in which case the penalty shall be not more than twenty-five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of five hundred thousand dollars in any six-month period

(2) Suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of this Part.

### **CONCLUSIONS OF LAW**

#### **16.**

The Commissioner, based on the facts presented, has found **William Huye, III** in violation of multiple provisions set out in Title 22, specifically La. R.S. 22:1924(A)(1)(a), and (2)(a) and (c) as defined by La. R.S. 22:1923, in addition to unfair trade practices under Louisiana Insurance Code, specifically La. R.S. 22:1964 (12) and (13).

#### **17.**

### **COMMISSIONER'S ACTION**

As a result of the investigation and documentation in possession of the LDI, the LDI has determined that emergency action is required to protect the public health, safety, and welfare, and the Louisiana Commissioner of Insurance hereby orders **William Huye, III**, in accordance with La. R.S. 22:1969, to **CEASE AND DESIST** from the activity and the violations of law stated above.

In addition, in accordance with La. R.S. 22:1969, the Commissioner hereby fines **William Huye, III**, in the amount of **\$500,000.00**.

#### **18.**

### **YOUR ACTION**

Please remit your **\$500,000.00** fine payment and a copy of this notice to:

Louisiana Department of Insurance  
Attention: Accounts Receivable  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

Pursuant to La. R.S. 22:2191(A)(2), any person aggrieved by an act of the Commissioner may request a hearing. You must make a written demand for an appeal within thirty (30) days from the

date of this notice. Failure to file a written demand for an appeal within thirty (30) days from this notice will preclude your right to an administrative hearing.

Pursuant to La. R.S. 22:2191(B), your written demand for an appeal (1) shall reference the particular sections of the statutes and rules involved; (2) shall provide a short and plain statement of the matters asserted for review; and (3) shall attach a copy of the order or decision that you are appealing. Appealing this notice does not stay the action of the Commissioner of Insurance. Pursuant to La. R.S. 22:2204, you must request and be granted a stay of this action by the Division of Administrative Law. Your request for a stay may be included in your appeal. Your written demand for an appeal shall be filed with the Louisiana Department of Insurance at the addresses below:

Louisiana Department of Insurance  
Attn: J. David Caldwell, Executive Counsel  
P. O. Box 94214  
Baton Rouge, LA 70804-9214

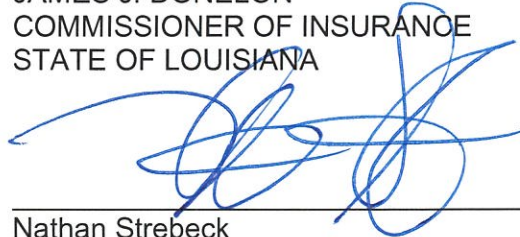
Telephone: (225) 342-4673  
Fax: (225) 342-1632

File in Person at:

1702 N. Third Street  
Baton Rouge, LA 70802

Signed in Baton Rouge, Louisiana this 1<sup>st</sup> day of May 2023.

JAMES J. DONELON  
COMMISSIONER OF INSURANCE  
STATE OF LOUISIANA



BY:

Nathan Strebeck  
Deputy Commissioner  
Office of Insurance Fraud  
Louisiana Department of Insurance  
Telephone: (225) 219-5819

**CERTIFICATE OF SERVICE**

**Article #9589 0710 5270 0160 8403 83**

**Article #9589 0710 5270 0160 8403 90**

I hereby certify that I have this day served the foregoing document upon William Huye, III, by mailing a copy thereof properly addressed with postage prepaid, this 1<sup>st</sup> of May 2023.

Takiyah Banks  
Printed Name

Takiyah Banks  
Signature