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April 8, 2009

The Honorable Pat Patterson, Chairman
Florida House of Representatives
Insurance, Business and Financial Affairs Committee
Room 308, House Office Building
Tallahassee, Florida 32399

The Honorable Garrett Richter, Chairman
Florida Senate
Banking and Insurance Committee
Room 320, Knott Building
Tallahassee, Florida 32399

The Honorable Alex Sink, Chief Financial Officer
Department of Financial Services
The Capitol
Tallahassee, FL 32399-0301

Kevin M. McCarty, Commissioner
Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399

Re: The anti-competitive outcomes and abuses of My Safe Florida Home: A response to March 12, 2009 letter from Hon. Alex Sink.

Request for documents and information pursuant to Florida Statutes Chapter 119.

Dear Chairman Patterson, Chairman Richter, CFO Sink and Commissioner McCarty:

I represent a well-established Florida home inspection company. I write for three purposes: (1) to formally oppose suggestion no. 1 in CFO Sink's letter, attached hereto as Exhibit A, to Rep. Patterson and Sen. Richter; (2) to demand that the government take formal and unequivocal action to end the abuses of the MSFH program and the WCE designation discussed herein; and (3) to obtain information related to the My Safe Florida Home ("MSFH") program pursuant to Florida Statutes Chapter 119.

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CFO Sink, in her letter attached as Exhibit A, urges the resumption of MSFH without any changes in its mode of operations. This letter will explain how MSFH has debilitated Florida's home inspection industry and why it should never be reinstated without major overhaul. I will show that the manner in which MSFH was administered has concentrated wealth in a select few and has likely destroyed numerous Florida businesses and cost hundreds if not thousands of Florida jobs in the home inspection industry.

MSFH has financially destroyed my client's business. Before MSFH, the company was a strong industry leader generating \$3 million in annual revenues and employing over 30 employees. In less than two years, its annual revenues sank to approximately \$700,000.00 and it now employs nine people. It soon may be forced to close down altogether. The knee-jerk reaction that this downturn has been caused by the economic slowdown is incorrect. Its business began to fall sharply just after MSFH was instituted. The company was shut out of MSFH and to this day he does not know why.

MSFH gave ten companies an oligopoly of the home inspection market. Since the program's inception, according to CFO Sink's letter (Exh. A) and the program's website (Exh. B), these ten companies performed 400,000 inspections. On information and belief, the price paid for each inspection was \$150.00, a total revenue windfall to these companies of \$60 million in approximately two years. While each of these companies was receiving an average of \$3 million per year from the government plus other direct financial benefits discussed below, my client's annual revenues fell from approximately \$2.7 million in 2005 to just over \$500,000.00 in 2008. Approximately 85% of this precipitous drop in annual revenues is due to MSFH and its fallout, and his losses in 2006 and 2007 were entirely caused by it.

MSFH's effect on the home inspection industry (the "Industry") is partially due to mismanagement by the Office of Insurance Regulation and its managing contractor, Federal Alliance for Safe Homes ("FLASH"), and partially due to anticompetitive and illegal actions of the ten, now nine, participant companies.

MSFH's original purpose was to perform a new kind of home inspection, which I will refer to as a "Hurricane Retrofit Inspection," or "HRI." The purpose of the HRI was to find and recommend home improvements to increase Florida homes' storm-worthiness. This inspection was very different from the Uniform Mitigation Inspection ("UMI") routinely performed in the industry prior to MSFH, which was performed to certify that homes met minimal standards of storm worthiness so that homeowners could obtain reduced insurance rates.

At its inception, only ten companies were selected or permitted to participate as MSFH inspectors, newly titled "Wind Certification Entities" or "WCE's". (Exh. B) That number was reduced to nine on June 30, 2008, when one was dropped. (Exh. B) They were not selected

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based on merit and the other members of the industry were not excluded based on lack of merit. My client believes that the companies were selected via a process that was not open and fair, and which did not serve the public's interest. At this point, we do not know how this process was established, but we are investigating whether it involved members of the government, Citizens Insurance and/or FLASH.

Once the original WCE's were chosen, it was impossible for other companies to become WCE's. Attached hereto as Exhibit C is the process for inspectors to become qualified as MSFH inspectors. As the exhibit shows, they could only do so by applying to and working for an existing WCE. Thus no other inspection company could employ an MSFH inspector or perform the MSFH inspections. I simply can see no benefit to the public in so severely restricting the amount of companies which could provide the valuable service created by MSFH. This is comparable, in my opinion, to limiting the number of doctors who can provide publicly funded medical services. While members of the public would largely go untreated, a select few doctors or entities would be hugely enriched. I hope that one day soon the reason for so limiting the number of providers in this situation will become known to me.

However, this apparent inequity was augmented a year after the program was initiated. At that point, either the OIR or the legislature found that inspections were not being performed at the rate projected. Available funds were not being spent. In response, program was amended to fund ordinary UMI's, instead of just HRI's. Thus, My Safe Florida Home was no longer working to make Florida homes safer. Instead, MSFH was now paying for insurance inspections, saving homeowners money, and giving work ordinarily spread throughout the industry, to the ten WCE's. This decision was obviously disastrous for all home inspection companies other than the WCE's. And, my client tells me that he found out about this change via an announcement on the MSFH website that did not include any explanation as to the process by which this change came to be.

The other part of this story lies in the designation, "WCE," itself. The designation was intended to indicate that inspectors working for the designated companies took a special class, and were then authorized to perform a new kind of inspection, the HRI. However, the WCE's, with the government's help, have used this designation to gain an unfair advantage in the Industry, both while MSFH was operating and since it was terminated.

When MSFH was functioning, the WCE's did not need a marketing advantage beyond that which the program gave them. Their prices were lower for their customers: FREE. Plus, they were paid more for doing the inspections: \$150.00 per inspection for WCE's versus \$100.00 as the industry norm. However, when MSFH ended, the WCE's turned the designation into their new marketing strategy to maintain their unfair advantage over non-WCE's. They have used the

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“WCE” designation as a marketing tool despite the fact that they are no more qualified to perform UMI’s than any other fully qualified home inspection company.

As shown by Exhibit B, WCE’s enjoyed the marketing efforts and cache of the State itself. WCE’s known to my client distributed advertising and marketing materials related to their newfound status to insurance agents and other business sources. In addition, all homeowners who obtained HRI’s or free UMI’s also would become familiar with the WCE’s for networking and word-of-mouth advertising benefits. The value of this marketing and advertising was obviously enormous.

When the program ended, the “WCE” designation should have become obsolete. Instead, WCE’s have argued that their designation should entitle them to extraordinary, unfair and illegal advantages over their non-WCE competitors. Specifically, they have lobbied the legislature and the OIR to be authorized to perform UMI’s without engineer supervision;¹ and simultaneously have lobbied for changes that would drive every non-WCE out of business by requiring that non-WCE inspections must be directly performed by licensed engineers, architects, or contractors. If successful, the resulting changes would directly contravene Florida Statutes §471.003(2)(E) and would require non-WCE’s to employ enough engineers to perform routine UMI’s that they never perform under the current system and laws. At \$100.00 per inspection, this would obviously be financially infeasible for the non-WCE’s and they would be driven out of business. These lobbying efforts are unjustifiable and outrageous; and yet they have come close to success on several occasions. Furthermore, as explained in footnote 1 below, the WCE’s have usurped the authority they now seek to ratify through their lobbying efforts.

¹ Significantly, WCE’s have usurped this authority through the evolution and history of MSFH. When MSFH was instituted, the WCE’s were authorized to perform HRI’s without engineer supervision. Then, when MSFH was amended to fund UMI’s, WCE’s began to perform UMI’s without engineer supervision, and to my client’s knowledge, without explicit legal authority provided for this change in MSFH. This practice directly violated Fla. Stat. §471.003, but it became accepted in the industry and when MSFH ended, WCE’s continued this illegal practice. We acknowledge that when MSFH was changed to include UMI’s, authority to perform inspections without engineer supervision may have been given to WCE’s, but if this was done, it would be yet another grossly unfair and unjustifiable advantage granted WCE’s by the government and adverse to the interests of the public. The disadvantage to the public is particularly clear in light of the fact that MSFH inspections have been of notoriously poor quality, as documented in numerous newspaper articles. We believe that it is for this reason that PBS&J was designated as a “Quality Assurance & Grant Work Inspection Firm” well after the program’s inception. It is also unknown how this firm obtained this assumedly lucrative contract.

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In other words, the WCE's have attempted to restore, and indeed strengthen, their government-issued oligopoly, by having their obsolete, government-issued designation mean that only they and licensed engineers are qualified to inspect homes for insurance companies. This restraint, if passed, would "Put the nail in the coffin" for all non-WCE's. Every one of them would end up out of business and the oligopoly would become a monopoly owned by nine companies. Nine moguls would be enriched beyond their wildest dreams and hundreds, if not thousands of honest, hard-working Floridians would lose their jobs and businesses.

In addition to the usurpation of authority detailed in footnote one, the WCE's succeeded, with the help of Citizens' Property Insurance Co., in forcing its competition out of the market. Exhibit D is a "Clarification" of Citizens' policy, which establishes that only licensed building inspectors, licensed engineers, licensed architects, licensed contractors, and ***unlicensed, unregulated, and unqualified*** WCE's may perform inspections for prospective Citizens policyholders. Again, historically, trained inspectors working under engineer supervision have always been authorized by statute to perform these inspections. Suddenly, Citizens declared that these individuals were no longer permitted to perform them, while at the same time allowing all WCE's, who are no more qualified, to perform them. This action by Citizens violated §471.003(2)(e) and the reason for its policy change has not been explained.

One of the largest WCE's, Don Meyler Inspections, is also one of its worst abusers. When my client tried to inform insurance agents about the misuse of the WCE designation, Meyler sued my client for defamation. Meyler also filed a grievance with the Board of Professional Engineers of the Department of Business and Professional Regulation, alleging that my client illegally performed inspections after the purported policy change by Citizens. (Exh. D) This change purportedly was accomplished and published by the "Clarification" email. For some reason, Meyler knew about Citizens' email, which was directed to insurance agents and not inspection companies. My client and others he knows in the Industry were totally unaware of the purported change. The abuse of the WCE designation, which should be obsolete and of no further application, is as audacious as it is improper and against the public interest. It must be stopped.

I assume that Mrs. Sink was not made aware of the side of MSFH discussed herein when she wrote her recommendation. My client, with many of his fellow "Non-WCE" competitors, has been fighting the illicit, anti-competitive conduct. I am investigating potential claims against Citizens and FLASH, and may soon add them as Third Party Defendants in the lawsuit filed by Meyler, Inc. I will also be investigating individual conduct within the OIR to ascertain who made the decisions to funnel 60 million tax dollars to a select few, while simultaneously undermining what could, and should have been a helpful, effective program to strengthen Florida

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homes, protect Florida families, and reduce the State's exposure to hurricane damage and its expense.

In the meantime, please do not follow Mrs. Sink's advice to reinstate MSFH. If it is done, however, please open the program up to all qualified inspection companies which wish to participate. In addition, we hereby respectfully request that the legislature immediately put an end to the fiction that "WCE's" are any more qualified or entitled to perform UMI's than any other home inspection company, and that employees of WCE's are no more qualified to perform said inspections than employees of qualified home inspection companies under the supervision of licensed engineers. The government should forbid the use of this designation for any unfair advantage, or should open up the opportunity to become a WCE to every company wishing to obtain the designation.

DEMAND FOR PUBLIC RECORDS PURSUANT TO FLORIDA STATUTES §§119.01 *et seq.*

As I have stated, my client is involved in litigation with Don Meyler Inspections. I am investigating the conduct of the government, FLASH and Citizens in defending my client and in countersuing Meyler for unfair trade practices and false advertising among other claims. Within that litigation, I of course can subpoena government officials to provide information and testimony. However, to save everyone time, I hereby demand that the following information be provided by all addressees, the disclosure of which is required by Florida Statutes §§119.01, *et seq.*

1. All documents related to the process by which it was decided that only 10 companies would be authorized to participate in MSFH and how and on what criteria those companies were selected, including all applications received by companies to become WCE's, including those not accepted and accepted as WCE's.
2. All documents related to the process by which it was decided that MSFH would pay for UMI's in addition to the inspections it was originally intended to perform ("HRI's").
3. Documents necessary to show how many HRI's and how many UMI's have been paid for through MSFH, when those inspections occurred, and how much has been paid to each MSFH WCE, and how many inspections were performed by each WCE on a monthly or quarterly basis.
4. The tape recording and transcript of the workshop meeting held at the OIR on December 15, 2008 on proposed changes to the OIR-B1-1802 form.
5. All documents submitted to OIR by Don Meyler Inspections, Meyler, Inc., or any lobbyist or agent on their behalf.

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6. All documents submitted to MSFH program by Don Meyler Inspections, Meyler, Inc., or any lobbyist or agent on their behalf.
7. All documents submitted to the Department of Financial Services by Don Meyler Inspections, Meyler, Inc., or any lobbyist or agent on their behalf.
8. All documents related to the question of whether the government approves of WCE employees performing UMI's without engineer supervision and without any other professional license as defined in Fla. Stat. §471.003.
9. All documents reflecting the government's knowledge and/or approval of the use of the WCE designation by WCE's as an advertising and/or marketing tool.
10. All documents in the governments possession related to the "Clarification" email attached hereto as Exhibit D, including how that "Clarification" was decided upon, whether the government ratified that "Clarification," and the individuals involved in that process.
11. All documents related to the process in which it was decided to add a Quality Assurance & Grant Work Inspection Firm to the MSFH program and the process of how PBS&J was selected as that exclusive provider and who selected it.
12. All documents necessary to show how many homes were retrofitted under MSFH and how much public MSFH money was spent on that work.
13. All documents related to consumer complaints, and other defects and quality problems related to inspections paid for with MSFH funds. Such documents should show which WCE was the subject of how many such complaints or other documented defects in its work.
14. Any and all disciplinary actions, complaints, warnings or other proceedings against Don Meyler Inspections, Inc. and/or Meyler, Inc.

I look forward to the receipt of the above documents, records and information. I also look forward to the opportunity to discuss any of the foregoing with any individual desiring such a discussion.

Respectfully submitted,

Jeffrey A. Norkin

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LIST OF ADDITIONAL INDIVIDUALS SERVED WITH THIS LETTER

The Honorable Charlie Crist, Governor

The Honorable Bill McCollum, Attorney General

The Honorable Charlie Bronson, Commissioner of Agriculture

The Honorable Jeff Atwater, President, Florida Senate

The Honorable Larry Cretul, Speaker, Florida House of Representatives

My Safe Florida Home Program Advisory Council:

Florida Bankers Association Appointee:

Mrs. Miriam Lopez
TransAtlantic Bank

Florida Insurance Council Appointee:

Mr. J. Otis Black
State Farm Insurance Company

Florida Home Builders Association Appointee:

Mr. Robert "Bob" Farr
Can Do Service Corporation

State University Faculty Member Appointee:

Mr. Kurtis "Kurt" Gurley
Civil and Coastal Engineering, University of Florida

House Speaker Appointees:

Representative D. Alan Hays, Chair
Florida House of Representatives
Representative Carlos Lopez-Cantera
Florida House of Representatives

Senate President Appointees:

Senator Michael "Mike" S. Bennett
Florida Senate
Senator Paula Dockery

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Florida Senate

Chief Executive Officer of the Federal Alliance for Safe Homes:

Mrs. Leslie Chapman-Henderson, Vice Chair
Federal Alliance for Safe Homes (FLASH)

Senior Officer of the Florida Hurricane Catastrophe Fund:

Dr. Jack Nicholson
Florida Hurricane Catastrophe Fund

Executive Director of Citizens Property Insurance Corporation:

Mr. Scott Wallace
Citizens Property Insurance Corporation

Director of the Division of Emergency Management:

Mr. William "Craig" Fugate
Division of Emergency Management, Department of Community Affairs

Jerold Budney, Esquire,
Greenberg Traurig, P.A., counsel for Don Meyler Inspections, Inc.