

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:

HURRICANE SANDY FEMA
DIRECT FLOOD LITIGATION

Master Docket

Misc. No. 15-700 (JBS)

**ORDER AND NOTICE OF
POSSIBLE DISMISSAL**

TO: All Plaintiffs' Counsel in
Sandy Flood Cases within the Above Docket
in which the Case has not been Reported
Tentatively Settled upon this Docket

PLEASE TAKE NOTICE that the Court, through its Hurricane Sandy Litigation Committee ["HSLC"], wishes to assure that each Plaintiff in the Hurricane Sandy FEMA Direct Flood Litigation, 1:15-mc-700, has a full opportunity to achieve the expedited negotiation and settlement of its Sandy Flood claim. For these purposes, the Court has temporarily stayed litigation in these Sandy cases so that prompt and intensive settlement efforts could proceed. See Stay Orders of March 13, 2015; May 13, 2015; and July 9, 2015. These efforts have succeeded in the resolution of over 350 Sandy cases in the first 120 days of the settlement stay period, and these tentatively settled cases were closed upon the docket and they are unaffected by this Order and Notice.

The United States Attorney's Office, on behalf of FEMA, has indicated that in the remaining cases upon the Sandy dockets, a group of about 150 cases are in the settlement process (having

submitted the necessary settlement materials) while another group of about 350 Sandy flood cases have been silent (having not submitted the necessary settlement materials). See Letter of AUSA Caroline A. Sadlowski, Chief, Civil Division (July 17, 2015) [Docket Item 16]. The "necessary settlement materials" are described in the attachment to AUSA Sadlowski's letter of July 17, 2015 [Docket Item 16-2], which is also attached to this Order.

The Court is concerned that Plaintiffs in this latter group of "silent" cases are neither litigating their claims nor pursuing the settlement of their claims despite the passage of more than 120 days since the stay was entered. Obviously, by not submitting the materials necessary for the settlement process, while also not requesting relief from the stay (which was the procedure offered in each of the Stay Orders) such a case becomes dormant due to non-prosecution.

Therefore, the Court, upon the advice of HSLC, wishes to give one last thirty-day opportunity to Plaintiffs in Sandy flood cases to participate in the expedited settlement process, or to declare that they wish their case to be relieved from the stay so that they can litigate their claim by trial. For cases that are already active in the expedited settlement process (including any case in which a settlement has been reached but not yet reported as tentatively settled by AUSA Sadlowski upon the docket), such

counsel should simply so indicate, within the thirty-day period. These options are specified below.

PLEASE TAKE FURTHER NOTICE that if, in a Sandy flood case that has not been reported upon this docket as tentatively settled, and for which Plaintiff's counsel fails to indicate, within the thirty-day period, either that Plaintiff has provided the necessary materials to FEMA (including cases recently resolved but not yet reported as tentatively settled upon the docket), or that Plaintiff seeks to opt out of the settlement process and to have the stay lifted and the case restored to the active trial list, the case will be dismissed for lack of prosecution (including failure, without explanation, to participate in the expedited settlement process) without prejudice to reopening only for good cause shown, pursuant to Local Civil Rule 41.1(a) (D.N.J.);

WHEREFORE, **IT IS**, this 30th day of **July, 2015**, hereby **ORDERED** that counsel for Plaintiffs in each Sandy flood case that has not been reported on the docket herein as tentatively settled shall, within thirty (30) days of the entry of this Order and Notice of Possible Dismissal, file a Declaration of Counsel upon the docket of the individual case indicating either:

- (1) That this case is in active settlement negotiations in the expedited settlement process contemplated by the Court's stay orders, and indicating further that Plaintiff's counsel has submitted to FEMA the necessary information, documentation, and settlement demand identified in the memo entitled "Instructions for**

submission of Hurricane Sandy settlement demand," dated July 17, 2015 (attached hereto as "Exhibit A")¹ or that the case has been recently settled but not yet reported as "tentatively settled on the docket.";

OR

- (2) That Plaintiff wishes to opt out of the settlement process and Plaintiff asks that the stay be lifted in Plaintiff's case, and the reasons why Plaintiff declines to participate in the settlement process;

IT IS FURTHER ORDERED that if counsel in any open Sandy flood case upon this docket fails to timely submit the Declaration under subparagraph (1) or (2) above within thirty (30) days of entry of this Order and Notice, or fails to otherwise show cause within this thirty (30) day period why the case should not be dismissed, then the Court will dismiss the case for failure to prosecute, without prejudice to reopening only if good cause is shown.

FOR THE COURT:


JEROME B. SIMANDLE,
Chief U.S. District Judge

¹ If Plaintiff has not already supplied to FEMA the necessary settlement materials identified in "Exhibit A" hereto, Plaintiff's counsel shall do so within thirty (30) days of entry of this Order and Notice and accordingly declare, under subparagraph (1), above, that this has been done.

EXHIBIT "A"

Memorandum (Attachment A)



Subject	Date
Instructions for submission of Hurricane Sandy settlement demand.	July 17, 2015
To	From
All Hurricane Sandy Plaintiffs' Counsel	FEMA / U.S. Attorney's Office, District of New Jersey

The Federal Emergency Management Agency ("FEMA") has been in the process of attempting to resolve all claims in litigation arising from Hurricane Sandy. FEMA has brokered and reached tentative settlements in over 300 Write Your Own ("WYO") and National Flood Insurance Program ("NFIP") Direct cases since the March 13, 2015 Order for Temporary Stay has been in effect. Approximately 500 cases remain to be negotiated and settled.

All plaintiffs who have not yet had their claims reviewed and negotiated since the stay has been in effect are encouraged to submit their materials to FEMA as soon as possible. A dedicated e-mail address has been established and is available for immediate use. Counselors are invited to prepare case materials for settlement review and send them to FEMA at fema-nfip-settlements@fema.dhs.gov, with a "cc" to Linda.Litke@fema.dhs.gov, counsel for FEMA on New Jersey matters. Please include a cover letter with your submission that contains the following information:

- Case name and index number
- Standard Flood Insurance Policy ("SFIP") number
- Insured property address
- Name of plaintiff's retained engineer (if any)
- For Building/Structure damages:
 - Policy Limit
 - Payment(s) made by FEMA or WYO carrier (if any)
 - Plaintiff's repair estimate
- For Contents damages:
 - Policy Limit
 - Payment(s) made by FEMA or WYO carrier (if any)
 - Plaintiff's contents inventory amount
- Prior Increased Cost of Compliance ("ICC") payments (if any)
- Total amount demanded

Please also note in the cover letter whether the plaintiff has received a Substantial Damage Letter, and whether or not the plaintiff's insured property was demolished following Hurricane Sandy.

If the insured property is a condominium, please include the articles of incorporation, the Residential Condominium Building Association Policy, and bylaws for the condo association.

In addition to the cover letter, please provide any engineer or adjuster reports that your client is relying on to support his/her claim, and include any invoices referenced in the supplied engineer or adjuster reports. Photographs (color is preferred) demonstrating that the damage claimed was a direct physical loss by or from flood should also be submitted for review. Moreover, please provide a copy of the flood carrier's (FEMA's or WYO's) independent adjuster's report with photographs.

If the attachments in your e-mail are too large to send electronically, you may opt to set up an online Dropbox location to place the files in for FEMA to access. If you choose to do this, please send an email to Linda.Litke@fema.dhs.gov notifying her that the materials have been dropped into an external Dropbox, and include the Dropbox link in the e-mail.

We look forward to working with you on resolution of these cases.