



Super Storm Sandy Litigation Comments

Public Meeting
March 6, 2014

Updated March 4, 2014

Comments From:
John R. Vales, Esq.

Riker, Danzig, Scherer,
Hyland, Perretti LLP



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ATTORNEYS AT LAW

February 27, 2014

Via E-Mail ([John O'Brien@nj.uscourts.gov](mailto:John.O'Brien@nj.uscourts.gov))

William T. Walsh, Clerk
Clarkson S, Fisher United States Courthouse
402 E. State Street, Room 2020
Trenton, NJ 08608
Attn: John O'Brien, Chief Deputy

Re: Superstorm Sandy Litigation Cases Pending in the U.S. District Court for
the District of New Jersey – Case Management Comments on Behalf of
American Security Insurance Company

Dear Chief Deputy O'Brien:

This firm represents American Security Insurance Company ("ASIC") in various insurance coverage actions presently before this Court arising out of wind-related and/or flood-related damages caused by Superstorm Sandy. On behalf of ASIC, we write in response to the invitation of the Court's Superstorm Sandy Litigation Committee to submit comments or proposals for case management of Superstorm Sandy cases pending in this District. Our comments set forth in this letter do not apply to actions involving policies issued pursuant to the federal government's National Flood Insurance Program ("NFIP"), as ASIC is not an NFIP carrier.

We believe that it would be helpful for the Court to adopt case management procedures for the handling of non-NFIP Superstorm Sandy cases similar to those recently entered by the U.S. District Court for the Eastern District of New York in Case Management Order No. 1 (*In re Hurricane Sandy Cases*, 14-mc-00041, Docket No. 243) (the "EDNY CMO"), a copy of which has been previously submitted to this Court.

We believe the EDNY CMO provides a sensible framework for case management, including (i) the assignment of cases involving the same property to the same district judge and magistrate judge, (ii) the automatic disclosure of discovery between the parties without the necessity for a Rule 16 conference, and (iii) the early resolution of cases through arbitration or mediation following the completion of automatic disclosures.

We also would support the following modifications or additions to the EDNY CMO:

- Extending the time for the defendant-insurance carriers to set forth their position regarding insurance coverage by an additional 21 days after receipt of the plaintiff's automatic disclosures, so that insurers have the benefit of such information when evaluating their coverage position.
- Specifying that no interrogatories or document requests shall occur without leave of Court or by consent of the parties prior to the completion of automatic disclosures in accordance with the CMO.
- Extending the period to serve privilege logs until 14 days after the automatic disclosure deadline, and waiving any requirement to log privileged communications occurring after the service of a complaint.

We look forward to discussing this further at the public meeting on March 6, and we thank the Court very much for its consideration.

Respectfully submitted,



John R. Vales

cc: All Counsel on Service List (via e-mail)

Comments From:
Samuel G. Destito, Esq.

Windels, Marx, Lane &
Mittendorf, LLP

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March 3, 2014

VIA EMAIL to: sandylitigation@njd.uscourts.gov

William T. Walsh, Clerk
Clarkson S. Fisher, United States Courthouse
Attn: John O'Brien, Chief Deputy
402 E. State Street, Room 2020
Trenton, NJ

Re: Super Storm Sandy Flood Litigation

Dear Deputy O'Brien:

In connection with the upcoming March 6, 2014 public meeting regarding the handling of Super Storm Sandy ("Sandy") cases we submit the following comments pursuant to the Notice of Public Meeting. This firm represents Narragansett Bay Insurance Company ("Narragansett") which has been named as a defendant in several insurance coverage actions currently pending in the district court of New Jersey involving Sandy claims. We are also involved in Sandy claims in the Eastern District of New York. Recently, the Eastern District held a general meeting for the attorneys handling Sandy cases. As a result, the Eastern District entered a Case Management Order, a copy of which was already submitted to the court.

While we generally agree with the approach to discovery set forth in the Order, we suggest some modifications. The automatic disclosures by plaintiffs and defendant insurers should be staggered rather than simultaneous, with the plaintiffs making their disclosures within 60 days of any order entered by the Court and the defendants having an additional 30 days after that date to make their disclosures.

We also agree with the modifications suggested on page 2 of the Riker Danzig submission dated February 27, 2014 on behalf of American Security Insurance Company.

William T. Walsh, Clerk
February 28, 2014
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Thank you for your consideration of these comments.

Respectfully submitted,

/s/ Samuel G. Destito
Samuel G. Destito

Comments From:
Melanie A. Leney, Esq.

Montgomery McCracken



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March 3, 2014

Via E-mail (sandylitigation@njd.uscourts.gov)

William T. Walsh, Clerk
Attn: John O'Brien, Chief Deputy
Clarkson S. Fisher United States Courthouse
402 E. State Street, Room 2020
Trenton, NJ 08608

Re: Hurricane Sandy Related Cases Seeking Benefits Under the National Flood Insurance Program Pending Before the United States District Court for the District of New Jersey

Dear Chief Deputy O'Brien:

This firm, along with the King Law Group, P.I.C., represents USAA General Indemnity Insurance Company ("USAA GIC"), a Write-Your-Own ("WYO") Program carrier participating in the United States government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), as amended, (*see* 42 U.S.C. § 4001, *et seq.*). USAA GIC appears herein under 44 C.F.R. § 62.23(f) in its "fiduciary" capacity as the "fiscal agent of the United States." *See* 42 U.S.C. § 4071(a)(1); *Gowland v. Aetna Cas. & Surety Co.*, 143 F.3d 951, 953 (5th Cir. 1998).

I write in connection with the Court's notice ordering a public meeting on March 6, 2014 to discuss the management of the Super Storm Sandy Flood Litigation. USAA GIC has been named as a defendant in a handful of lawsuits in its capacity as a WYO company issuing Standard Flood Insurance Policies pursuant to the NFIP. By the above-referenced notice, the Court requested that counsel submit comments regarding this litigation in advance of the March 6 public meeting.

This letter serves to advise the Court that USAA GIC supports the February 28, 2014 correspondence submitted by the law firm of Nielsen, Carter & Treas, LLC opposing the letter and proposed Uniform Scheduling Order submitted by John F. Casey of Wolff & Samson on February 24, 2014, for the same reasons set forth in the Nielsen firm's correspondence. In addition, USAA GIC agrees that the Nielsen firm's proposed Case Management Order, submitted to the Court on January 31, 2014 on behalf of a number of other WYO companies

MONTGOMERY McCRACKEN WALKER & RHOADS LLP

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A PENNSYLVANIA LIMITED LIABILITY PARTNERSHIP
LOUIS A. PETRONI, NEW JERSEY RESPONSIBLE PARTNER

William T. Walsh, Clerk

Attn: John O'Brien, Chief Deputy

March 3, 2014

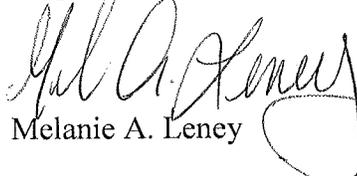
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participating in the NFIP, provides an excellent framework for the Court to consider, insofar as a global case management framework for WYO matters is concerned.

I understand that the Court requested that counsel's comments be submitted no later than February 28, 2014. However, the Nielsen firm's February 28 letter was only provided to me at 4:16 p.m. on February 28, which did not permit sufficient time to respond on this date. Thus, I respectfully request that the Court accept this submission.

Thank you for your attention to this matter.

Respectfully submitted,



Melanie A. Loney

cc: All Known Counsel with NFIP Cases Arising From Hurricane Sandy (*via e-mail only*)
Mary Ellen King, Esq. (*via e-mail only*)

Comments From:

Allan Maitlin

Sachs, Maitlin Fleming & Greene

Dear Mr. O'Brien,

I am sorry I cannot make the conference. My only contribution to the resolution of the problem generated is the difficulty with the FEMA program for insurance. It is creating the flood of litigation. FEMA requires a proof of loss as part of the policy requirements. They have extended the date for filing proofs to April 2014. That was a big help. The FEMA policy requires institution of suit in the United States District Court within one year of a partial or full denial of payment. Most people receive a partial payment and are busy filing supplemental claims. That is a long process. I recently filed a supplemental claim for a client but was faced with a limitation of suit deadline of Feb 27.

I received an acknowledgement from the adjuster of the claim with a note that he was swamped with supplemental and original claims and did not know when he could get to it. I spent three days on the phone trying to find someone with authority to extend the suit deadline. After 12 phone calls to various FEMA phone numbers I finally reached the Associate Counsel for FEMA in Washington D.C. I explained the problem as well as alerting him to the great concern of the United States District Court in NJ about all the litigation. He spoke to someone in the office of the head of FEMA and emailed me that they cannot defer the date for filing complaints. As a result, I had to file a complaint last week and will be filing another by Monday. This is adding to the burden on the Court. Surely there is some way for FEMA to suspend the date just as they did for the proof of loss. What makes matters worse is that in order to maintain a lawsuit, a proof of loss must be filed. Thus they suspend the filing of the proof but insist on the filing of the lawsuit. People will be misled into thinking they can file suit without the proof. Every case that I have read resulted in a dismissal of the lawsuit if there is no proof of loss.

The solution is found in the policy. Every litigant should be required to go to appraisal as per the policy language. I have named my appraiser in my complaint as well as past correspondence. The demand has been ignored. The insured is therefore required to file a notice of motion to enforce the demand. There should be a system that requires the insurance company or FEMA to immediately appoint an appraiser as required by the policy. That would result in the two appraisers either agreeing on the loss or the appointment of a neutral umpire to resolve the differences as required by the policy. Either a notice of enforcement by the court as part of the notice provisions or an immediate meeting with the Magistrate, even before an answer is filed. That should resolve many cases. Even now, there should be an immediate use of the appraisal process to resolve cases. Two professionals in the building field can resolve this quickly. The umpires should be builders or insurance adjusters from the property field associated with independent adjusting firms that the parties can agree to. I have done that numerous times on non flood claims.

FEMA maintains they do not go to appraisal if the dispute is over whether or not flood damage occurred. They will only go to appraisal on the amount of a particular claim where they acknowledge the flood damage. Thus a dispute over the dollar cost of the repair. If they were required to appraise both, that would solve the problem. Even if they went to appraisal on the agreed flood damage that would help.

I believe the USDC in Nevada had a program where there was a pre litigation filing of a complaint on construction claims for condos being built in Nevada. After that filing, the parties were required to go to mediation and report back to the court on the results. The pre filing requirements suspended the running of the statute of limitations but was set up in such a way as not to clog the courts with complaints.

I would be happy to answer any questions any of the committee members may have.

Allan Maitlin
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