ATTACHMENT 1

In re: Hurricane Sandy Cases Standing Order No. 14-2 (March 24, 2014)

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

IN RE: HURRICANE SANDY CASES	STANDING ORDER NO. 14-2

There are presently pending in the District of New Jersey more than 600 civil cases arising out of Hurricane Sandy,[1] and concerning standard flood insurance policies issued pursuant to the National Flood Insurance Act ("NFIA"), 42 U.S.C. §§ 4001-4084. The Court conducted a Public Hearing on March 6, 2014 and reviewed the submissions by a number of counsel concerning the case management of these actions. The Court hereby adopts a Hurricane Sandy Case Management Order ("HSCMO") to govern all Hurricane Sandy cases involving standard flood insurance policies sold and administered by participating Write Your Own ("WYO") Program insurance companies in accordance with the National Flood Insurance Program ("NFIP"), a Federal insurance program administered by the Federal Management Agency ("FEMA") pursuant to the NFIA ("WYO actions"), in addition to direct claims against the Federal Emergency Management Agency ("FEMA") under the NFIA ("direct suit").

[1] The Court utilizes the term "Hurricane Sandy" for the October 2012 storm; however, the Court makes no finding with respect to the precise meteorological categorization of the storm.

The HSCMO reflects the Court's commitment to resolving these cases promptly, fairly, and efficiently, with a median time from filing to disposition of six (6) months, which coincides with the District of New Jersey's overall pace for all civil cases on its docket. All counsel and parties shall cooperate with one another and with the Court to achieve this objective.

The HSCMO shall be entered in each NFIP and direct suit action upon the filing of an answer, and shall supersede all prior scheduling orders in the NFIP and/or direct suit cases. Parties may seek an exemption from the application of the HSCMO by way of informal letter application to the Magistrate Judge, setting forth, with specificity, good cause to warrant the requested exemption, and stating whether the adversary consents to the requested exemption. In the event an individual action sets forth claims for damages caused by sources other than flooding (to include, without limitation, wind, fire, or any combination thereof), but pertaining to the same property, the cases shall be reassigned to the same District Judge and Magistrate Judge and consolidated for discovery purposes, as set forth in the HSCMO.

Consequently, upon the Court's own motion and with approval of the Board of Judges of the United States District Court for the District of New Jersey,

IT IS ON THIS 24th DAY OF MARCH 2014 HEREBY:

ORDERED that the Hurricane Sandy Case Management Order No. 1 appended hereto as Exhibit A shall govern National Flood Insurance Program litigation, in addition to direct claims against FEMA pursuant to the National Flood Insurance Act, arising out of Hurricane Sandy.

FOR THE COURT:

Jerome B. Simandle

JEROME B. SIMANDLE
CHIEF UNITED STATES DISTRICT JUDGE

ATTACHMENT 2

Hurricane Sandy Case Management Order No. 1 (March 24, 2014)

HURRICANE SANDY CASE MANAGEMENT ORDER NO. 1

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1. Applicability of the HSCMO

This Hurricane Sandy Case Management Order No. 1 ("HSCMO") governs all Hurricane Sandy cases involving standard flood insurance policies sold and administered by participating Write Your Own ("WYO") Program insurance companies in accordance with the National Flood Insurance Program ("NFIP"), a Federal insurance program administered by the Federal Management Agency ("FEMA") pursuant to the National Flood Insurance Act ("NFIA"), 42 U.S.C. §§ 4001-4084 ("WYO action"), in addition to direct claims against the Federal Emergency Management Agency ("FEMA") pursuant to the NFIA ("direct suit"). The HSCMO shall supersede all prior orders concerning NFIP and/or direct suit actions. If a party requests to be exempted from the application of the HSCMO, the party shall submit an informal letter application to the Magistrate Judge within fourteen (14) days of entry of the HSCMO, setting forth, with specificity, good cause to warrant the requested exemption, and a statement of whether the

adversary consents to the requested exemption. The HSCMO shall govern the action unless otherwise ordered by the Court. In the event an individual action sets forth claims for damages caused by sources other than flooding (to include, without limitation, wind, fire, or any combination thereof), but pertaining to the same property, the cases shall be reassigned to the same District Judge and Magistrate Judge and consolidated for discovery purposes, as set forth in the HSCMO.

2. Federal Rule of Civil Procedure 16

The HSCMO constitutes the scheduling order contemplated by Federal Rule of Civil Procedure 16(b), in order to ensure "the just, speedy, and inexpensive" resolution of each NFIP and direct suit action in accordance with Federal Rule of Civil Procedure 1, and in recognition of the Court's commitment to the prompt, fair, and efficient resolution of these actions.

3. Automatic Dismissals of Certain Claims

a. The following claims are hereby dismissed from any WYO action or direct suit:

i. Jury demands, see Lehman v. Nakshian, 453 U.S. 156, 160-61 (1981) (noting that, "[i]t has long been settled that the Seventh Amendment right to trial by jury does not apply in actions against the Federal Government"); Van Holt v. Liberty Mut. Fire Ins. Co., 163 F.3d 161, 165-67 (3d Cir. 1998) (noting that, "only FEMA bears the risk" of standard flood insurance policies issued by WYO companies and that "a lawsuit against a WYO company is [therefore], in reality, a suit against" the federal government because "the United States treasury funds [ultimately] pay off the insureds' claims"); Robinson v. Nationwide Mut. Ins. Co., No. 12-5065, 2013 WL 686352, at *6 (E.D. Pa. Feb. 26, 2013) (finding "no Constitutional right to a jury trial" for plaintiffs' WYO claims);

ii. State law claims, see C.E.R. 1988, Inc. v. Aetna Cas. & Sur. Co., 386 F.3d 263, 268 (3d Cir. 2004) (noting that "state-law claims are preempted by the NFIA" whether contractual in nature or "'sounding in tort[,]' but 'intimately related to the disallowance of

[an] insurance claim") (citing Van Holt, 163 F.3d 161, 167);

iii. Punitive damages claims, see Messa v. Omaha Prop. & Cas. Ins. Co., 122 F. Supp. 2d 513, 522-23 (D.N.J. 2000) (dismissing plaintiffs' "extra-contractual" punitive damages claim "because federal law does not provide for" such remedies in NFIP cases); 3608 Sounds Ave. Condo. Ass'n v. S.C. Ins. Co., 58 F. Supp. 2d 499, 503 (D.N.J. 1999) (finding plaintiff's state "common law claims of punitive damages and attorney's fees" not cognizable in suits "brought pursuant to the NFIA"); Dudick v. Nationwide Mut. Fire Ins. Co., No. 06-1768, 2007 WL 984459, at *5 (E.D. Pa. Mar. 27, 2007) (dismissing plaintiff's punitive damage claims because such claims "contravene the National Flood Insurance Program's purpose of reducing fiscal pressure on federal flood relief efforts")

b. The following parties are hereby dismissed from any WYO action:

i. FEMA; and/or
ii. Directors and/or officers of FEMA.

c. The following parties are hereby dismissed from any direct suit:

i. Officers and/or directors of FEMA.

d. Any counsel seeking to reinstate any such dismissed claims must file within thirty (30) days from the entry of the HSCMO a letter request to the Magistrate Judge for reinstatement. Any request to reinstate the dismissed claims shall set forth the specific legal basis for the requested relief (including, without limitation, all jurisdictional issues) with citations to relevant authority. The adversary shall thereafter have seven (7) days to file opposition.

4. Automatic Discovery Procedure[2]

In recognition of the issues generally implicated in NFIP and direct suit actions, the Court shall require the automatic disclosure of certain information in an expedited manner. This requirement is intended to facilitate the necessary evaluation of each action prior to the Court's initial case management conference. The following discovery protocol shall therefore govern the initial phase of discovery in lieu of the initial disclosures set forth by Federal Rule of Civil Procedure 26(a).

The discovery protocol generally requires that all pretrial discovery be completed within one hundred and twenty (120) days from entry of the HSCMO. The Hurricane Sandy Case Management Discovery Schedule, available on the Court's website for Hurricane Sandy litigation, generally summarizes the time frames within which the parties shall exchange, produce, and/or conduct necessary discovery.

Nothing in the HSCMO, however, shall be construed to preclude a party from exchanging additional information that a party reasonably considers to be helpful in evaluating the legal and factual contentions at issue in the litigation.

Each party must simultaneously serve Automatic Disclosures as set forth herein within thirty (30) days from entry of the HSCMO. Counsel should not file these Automatic Disclosures on the CM/ECF system.

a. Automatic Disclosures by the Plaintiff:

i. Plaintiff shall provide the following disclosures with respect to each property set forth in the Complaint:

[2] The Court notes that the Eastern District of New York entered a Case Management Order concerning certain litigation arising out of Hurricane Sandy. In re Hurricane Sandy Cases, 14-mc-41, Case Management Order No. 1 (E.D.N.Y. Feb. 21, 2014), *available at* https://www.nyed.uscourts.gov/sites/default/files/general-ordes/14mc41cmo01.pdf. The Court adopted in part the Eastern District of New York's Case Management Order in the Court's Case Management Order No. 1, particularly with respect to Automatic Disclosures.

1. The current address of each plaintiff property owner;

2. The address of each affected property;

3. The name of each insurer and all policy numbers for each insurance policy held by or potentially benefitting plaintiff and/or the property on the date of the loss, including relevant claim numbers for any claims;

4. A detailed itemized statement of claimed damages, including content claims if in dispute;

5. A statement of any amounts paid or offered to be paid under the policy and a detailed itemization of those items for which plaintiff claims underpayment with citation to the supporting documentation;

6. In the event of nonpayment, the basis upon which defendant denied coverage;

7. A statement setting forth prior attempts at arbitration or mediation, if any; and

8. The identification of any other Hurricane Sandy related lawsuits filed or contemplated for that particular property or plaintiff.

ii. Plaintiff shall provide the following documents with respect to each property set forth in the Complaint:

1. All documents supporting or evidencing the claimed loss, including, without limitation, loss estimates from other insurers, any adjuster's reports, engineering reports, contractor's reports or estimates; photographs, claim log notes, and any other documents relating to repair work

performed as a result of Hurricane Sandy, including contracts, bids, estimates, invoices or work tickets for completed work repair documentation at issue;

2. All documents reflecting any payments received to date from any insurer, FEMA, or from any other federal, state, or local governmental program including, without limitation, the United States Small Business Association;

3. All documents relied upon by plaintiff in accordance with the applicable proof of loss requirements and documents required by the standard flood insurance policy, including documents relied upon by plaintiff to satisfy the detailed line item documentation requirement of the standard flood insurance policy;

4. Any written communications exchanged between the insured or insurer concerning the claimed loss; and

5. To the extent in plaintiff's custody, control, or possession, the entire nonprivileged file of any expert, estimator or contractor hired by the plaintiff or counsel to inspect the property and/or render a report, estimate, or opinion.

b. Automatic Disclosures by Defendant:

i. Defendant shall provide the following disclosures with respect to each property set forth in the Complaint:

1. In the event no payment on the policy has been made and/or offered, an explanation or statement setting forth the grounds for declination of

coverage, including, without limitation:

a. Any applicable policy exclusions;

b. Whether non-payment of premiums resulted in the denial of coverage;

c. Whether the dispute and/or declination concerns the nature of the damage incurred and its coverage under the policy;

d. Whether the dispute and/or declination concerns the value of the claimed losses; and

e. Whether the dispute and/or declination concerns any other legal basis;

2. In the event payment on the policy has been made and/or offered, defendant's position concerning the remaining amount of loss disputed; and

3. A statement setting forth prior attempts at arbitration or mediation, if any.

ii. Defendant shall provide the following documents with respect to each property set forth in the Complaint:

1. All non-privileged documents contained in the claims file concerning the policy, including any declination letters and notices of nonpayment of premiums;

2. Any documentation relating to an assessment of the claimed loss, including all loss reports and damage assessments, adjuster's reports, engineering reports, contractor's reports, photographs taken of the

damage or claimed losses, and any other evaluations of the claim;

3. The names and addresses of the adjusters for each claim;

4. All claim log notes;

5. Records of payments made to the insured pursuant to the policy;

6. All expert reports and/or written communications that contain any description or analysis of the scope of loss or any defenses under the policy;

7. All emails contained within the claim file or specific to that claim; and

8. To the extent in defendant's custody, control, or possession, the entire nonprivileged file of any expert, estimator or contractor hired by the defendant or its counsel to inspect the property and/or render a report, estimate, or opinion.

c. Production: The attorneys shall meet and confer by telephone or in person in good faith concerning the method and format of any production, including whether the production shall occur through electronic means within ten (10) days from entry of the HSCMO. All documents produced shall be Bates-stamped.

d. Electronically-stored information ("ESI"): To the extent ESI is implicated in an individual action, the parties shall first meet and confer concerning any ESI issues. Thereafter, any disputes may be presented to the Magistrate Judge by way of informal letter application. Any requests for electronically-stored information shall address, with specificity, whether "the burden or expense of the proposed discovery outweighs its likely benefit," in light "of the issues at stake in the litigation," as set forth

in Federal Rule of Civil Procedure 26(b)(2)(C)(iii).

e. Failure to Disclose: To the extent any party asserts that the adversary has failed to make appropriate disclosures, the party shall first make a written request setting forth, with specificity, the documentation and/or other information the party believes has not been disclosed. The adversary shall provide a written response within five (5) days from receipt of the initial correspondence. The parties shall then meet and confer, either in person or by telephone. Thereafter, any dispute shall be brought to the Magistrate Judge by way of informal letter application, which shall include counsel's certification that counsel have first met and conferred in person or by telephone concerning the dispute.

f. Privilege Log: Any documents required to be produced pursuant to the HSCMO, but withheld on the basis of privilege, shall be identified in a privilege log in accordance with Federal Rule of Civil Procedure 26(b)(5). When the inadvertent or mistaken disclosure of any information, document or thing protected by privilege or work-product immunity is discovered by the producing party and brought to the attention of the receiving party, the receiving party's treatment of such material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of such information, document or thing shall not by itself constitute a waiver by the producing party of any claims of privilege or work-product immunity. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure.

5. Statements of Contentions

Within forty-five (45) days from entry of the HSCMO, the parties shall exchange written statements of contentions.

The statements of contentions shall specifically address, without limitation, each party's legal, factual, and/or monetary contentions with respect to the litigation. Counsel should not file these Statements of Contentions on the CM/ECF system.

6. Additional Written Discovery

In addition to the Automatic Disclosures, the parties may conduct the following discovery following submission of the Statement of Contentions. All such additional discovery shall be served no later than sixty (60) days from entry of the HSCMO (fifteen (15) days after submission of the Statement of Contentions).

a. Interrogatories: Each party may serve no more than one set of interrogatories limited to ten (10) interrogatories pursuant to Federal Rule of Civil Procedure 33.

b. Requests for the Production of Documents: Each party may serve no more than one set of requests for the production of additional documents limited to ten (10) requests pursuant to Federal Rule of Civil Procedure 34.

c. Requests for Admissions: Each party may serve no more than twenty (20) requests for admissions pursuant to Federal Rule of Civil Procedure 36.

Any responses, answers, and objections to initial written discovery requests shall be served in accordance with the Federal Rules of Civil Procedure and the Local Civil Rules.

7. Depositions of Fact Witnesses

a. Each party may take no more than three (3) depositions pursuant to Federal Rules of Civil Procedure 30 and 31 without leave of Court. Such depositions shall conclude no later than one hundred and twenty (120) days from entry of the HSCMO.

b. All depositions are to be conducted in accordance with the provisions of Appendix R to the Local Civil Rules.

c. Scheduling of depositions shall be agreed upon by counsel and shall not be set unilaterally.

8. Motions to Amend

Any motions to amend the pleadings or to join new parties shall be filed no later than sixty (60) days from entry of the HSCMO.

9. Expert Witnesses

a. All expert reports and expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) on behalf of plaintiff shall be served upon counsel for defendant not later than one hundred and fifty (150) days from entry of the HSCMO, and shall be accompanied by the *curriculum vitae* of any proposed expert witnesses.

b. All expert reports and expert disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2) on behalf of defendant shall be served upon counsel for plaintiff no later than one hundred and eighty (180) days from entry of the HSCMO, and shall be accompanied by the *curriculum vitae* of the proposed expert witness.

c. Depositions of proposed expert witnesses pursuant to Federal Rule of Civil Procedure 26(b)(4)(A) shall be concluded no later than two hundred and ten (210) days from entry of the HSCMO.

d. The parties shall also exchange, in accordance with the HSCMO, written statements identifying all opinion testimony counsel that the parties anticipate will be presented at trial pursuant to Federal Rule of Evidence 701 and Teen-Ed v. Kimball International, Inc., 620 F.2d 399 (3d Cir. 1980).

10. Discovery Applications and Motions

In light of the Court's requirement that the parties meet and confer prior to filing an informal discovery application or motion, the Court does not anticipate significant discovery motion practice.

To the extent necessary, any modifications to the schedule and/or scope of the discovery shall be directed to the Magistrate Judge, and shall be filed in accordance with Local Civil Rule 37.1. Counsel shall first meet and confer in good faith by telephone or in person concerning any need to modify the schedule and/or scope of the discovery. This meet and confer shall proceed any informal application or motion, and all informal applications and motions shall contain a statement certifying counsels' compliance with the meet and confer obligations set forth herein and in Local Civil Rule 37.1.

All factual discovery motions and applications shall be made returnable prior to the expiration of the one hundred and twenty (120) day pretrial discovery period.

11. Extensions of Time

Any enlargement of the deadlines set forth herein shall be directed to the Magistrate Judge, and shall be granted only upon a showing of good cause. Counsel shall confer telephonically prior to applying to the Magistrate Judge to extend a deadline, and any application shall state whether the adversary consents or opposes the requested extension. However, applications that state that counsel have either too many cases, or are otherwise too busy to meet the deadlines prescribed herein, will fail to establish the requisite good cause. In the event counsel of record claims to be too pressed with other cases, the Court may require substitution of new counsel.

12. Initial Case Management Conference

Within one hundred and twenty (120) days from entry of the HSCMO (at which time the parties shall have substantially, if not entirely, completed the pretrial discovery process), the parties shall appear telephonically for an initial case management conference before the Magistrate Judge on a date to be set by the Court. In the event the parties have not received a case management conference date upon expiration of the one hundred and twenty (120) day period, the parties shall submit a letter request to the Magistrate Judge, setting forth joint proposed dates.

In anticipation of the initial case management conference, the parties shall meet and confer by telephone or in person, and shall submit a joint status report to the Court five (5) days prior to the scheduled conference. The joint status report shall be submitted to the Magistrate Judge and shall not

be electronically filed on the CM/ECF system. The joint status report shall address, without limitation: (1) the discovery completed to date; (2) any additional and/or outstanding discovery; (3) the timeline for the completion of any additional and/or contemplated discovery; (4) an explanation as to why the discovery has not been completed; (5) a statement of the disputed factual and/or legal contentions, and the remaining amount in controversy; (6) any other Hurricane Sandy related lawsuits filed or contemplated for that particular property or plaintiff (including, without limitation, claims related to wind damage, flood damage, fire damage, or any combination thereof); and (7) a statement setting forth the status of settlement discussions (including the propriety of mediation, arbitration, and/or a settlement conference).

At the conference with the Court, all parties who are not appearing *pro se* shall be represented by counsel who are familiar with the file and have full authority to bind their clients in all pre-trial matters. Counsel shall also be prepared to discuss settlement.

The Court shall issue in each case a scheduling order after the initial case management conference, which shall address, without limitation, time periods within which to complete any remaining discovery, a referral to arbitration and/or mediation, if appropriate, a date for the final pretrial conference, and/or a time period within which to submit dispositive motions (except with respect to motions contemplated pursuant to Federal Rule of Civil Procedure 12(b)(1) and (b)(2)).

13. Dispositive Motions

To the extent contemplated by the Court's scheduling order issued after the initial case management conference, any dispositive motions shall be filed, served, and responded to in accordance with Local Civil Rules 7.1, 7.2, 56.1 and 78.1. No dispositive motions, except motions pursuant to Federal Rules of Civil Procedure 12(b)(1) and (b)(2), shall be filed prior to the initial case management conference.

14. Alternative Dispute Resolution

Arbitration pursuant to Local Civil Rule 201.1 remains a preferred option for NFIP and direct suit cases. The parties may stipulate to the referral of an action to arbitration, or

the Court may order arbitration if the contested issues appear arbitrable.

If the dollar value of loss constitutes the primary issue after the parties exchange their Statements of Contentions, the parties shall proceed to loss appraisal in accordance with the applicable standard flood insurance policy, or the Court shall refer the action to compulsory arbitration pursuant to Local Civil Rule 201.1. Any disputes concerning the scope, effect, and/or interpretation of the standard flood insurance policy with respect to the loss appraisal process shall be submitted to the Magistrate Judge by way of informal letter application.

15. Joint Final Pretrial Orders

In the event the Court sets a date for a final pretrial conference in a scheduling order after the initial case management conference, the proposed final pretrial order will be submitted in the standard form to be provided by the Court. In accordance with Federal Rule of Civil Procedure 16(d), trial counsel shall appear at the final pretrial conference unless expressly excused by the Court.

16. Notice and Opportunity to Inspect

Prior to the demolition of any existing real property during the course of the litigation, plaintiff shall provide to defendant sufficient written notice of plaintiff's intent to destruct, remediate, and/or demolish any relevant evidence. Defendant shall thereafter be afforded a full and fair opportunity to inspect the relevant evidence for a period not to exceed sixty (60) days.

17. Discovery Confidentiality Orders

Upon submission of a certification in accordance with Local Civil Rule 5.3(b), the discovery confidentiality order set forth in Appendix S to the Local Civil Rules shall be entered. No alternate form of discovery confidentiality order shall be permitted without prior approval from the Court. Any request to modify the discovery confidentiality order set forth in Appendix S shall set forth, with specificity, the grounds for any proposed changes.

18. Motions to Appear *pro hac vice*

Local Civil Rule 101.1 shall continue to govern motions to appear *pro hac vice*. However, in the event an attorney has been admitted *pro hac vice* in one NFIP or direct suit action, any applications to appear *pro hac vice* in subsequent cases may be submitted to the Magistrate Judge by informal letter application setting forth whether the adversary consents, containing a statement certifying that no reportable events in accordance with Local Civil Rule 101.1(c) have occurred during the intervening period, appending a copy of the order granting counsel's *pro hac vice* appearance, and a proposed order in accordance with the form available on this Court's website for Hurricane Sandy litigation.

19. Telephonic Appearances

Counsel shall be permitted to appear telephonically at all conferences, unless the Court expressly orders an in-person appearance.

20. Liaison Counsel

The Court finds no cause to necessitate the appointment of liaison counsel at this time.

21. Consolidation with other Hurricane Sandy cases

All claims pertaining to the same property or plaintiff (including, without limitation, wind, flood, fire, or any combination thereof) will be consolidated **for discovery purposes only** and assigned to the same District Judge and Magistrate Judge. In actions in which Plaintiff did not file all claims pertaining to the same property or plaintiff (including, without limitation, wind, flood, fire, or any combination thereof) in the same suit, the plaintiff shall advise the Magistrate Judge of all such cases as soon as practicable, but no more than thirty (30) days after entry of the HSCMO. Thereafter, any Judicial Officer may sign an order reassigning the related cases in accordance with Local Civil Rule 40.1(c) to the District Judge and Magistrate Judge assigned to the first pending action, in addition to an order consolidating the actions for discovery purposes only in accordance with Local Civil Rule 42.1.

IT IS on this 24th day of March 2014,

SO ORDERED.

Jerome B. Simandle

JEROME B. SIMANDLE
CHIEF UNITED STATES DISTRICT JUDGE

ATTACHMENT 3

Hurricane Sandy Case Management Model Discovery Schedule

(Prepared by the Hurricane Sandy Litigation Committee)

HURRICANE SANDY CASE MANAGEMENT MODEL DISCOVERY SCHEDULE
(Prepared by the Hurricane Sandy Litigation Committee)*

The Hurricane Sandy Case Management Order ("HSCMO") shall be entered in each NFIP or direct suit action upon the filing of answer. The HSCMO generally requires the completion of the discovery process within the following periods of time:

1. Automatic Disclosures by Plaintiff:

   a. Information exchange: served not later than thirty (30) days from entry of the HSCMO

   b. Document production: served not later than thirty (30) days from entry of the HSCMO

2. Automatic Disclosures by Defendant:

   a. Information exchange: served not later than thirty (30) days from entry of the HSCMO

   b. Document production: served not later than thirty (30) days from entry of the HSCMO

3. Statements of Contentions: not later than forty-five (45) days from entry of the HSCMO

4. Interrogatories: served not later than sixty (60) days from entry of the HSCMO

5. Requests for the Production of Documents: served not later than sixty (60) days from entry of the HSCMO

6. Requests for Admissions: served not later than sixty (60) days from entry of the HSCMO

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* This summary of the schedule set forth in the Hurricane Sandy Case Management Order was prepared for ease of reference of judges, counsel, and parties in the cases covered by that Order.

7. Depositions of Fact Witnesses: not later than one hundred and twenty (120) days from entry of the HSCMO

8. Motions to Amend: not later than sixty (60) days from entry of the HSCMO

9. Expert Witnesses:

   a. Plaintiff's expert reports: not later than one hundred and fifty (150) days from entry of the HSCMO

   b. Defendant's expert reports: not later than one hundred and eighty (180) days from entry of the HSCMO

   c. Depositions of Expert Witnesses: not later than two hundred and ten (210) days from entry of the HSCMO

10. Case Management Conference: approximately one hundred and twenty (120) days from entry of the HSCMO

11. Dispositive Motions: within the time set forth by the Court's scheduling order issued after the initial case management conference, except motions pursuant to Federal Rules of Civil Procedure 12(b)(1) and (b)(2)

12. Alternative Dispute Resolution: within the time set forth by the Court's scheduling order issued after the initial case management conference

13. Joint Final Pretrial Order: within the time set forth by the Court's scheduling order issued after the initial case management conference

ATTACHMENT 4

Notice to the Bar re: Reallocation of Sandy Cases (July 15, 2014)

NOTICE TO THE BAR

Due to the imbalance of Hurricane Sandy cases in the District of New Jersey resulting from the differing geographical impacts of the storm, the Hurricane Sandy Litigation Committee recommended to the Board of Judges that Sandy flood and wind cases from the Trenton vicinage be reallocated to the Camden and Newark vicinages. The Board of Judges approved the following recommendations:

1. Trenton Sandy cases filed from April 1, 2014 through July 15, 2014 will be reallocated to and evenly split between Camden and Newark.

2. Any new Sandy cases filed July 16 onward that would be allocated to the Trenton vicinage will be allocated to and evenly split between Camden and Newark.

3. Camden and Newark vicinages will continue to receive Sandy cases originating in those vicinages, and the Trenton vicinage will continue to manage Sandy cases that were allocated to Trenton prior to April 1, 2014.

DATE: July 15, 2014

JEROME B. SIMANDLE, CHIEF JUDGE

ATTACHMENT 5

District of New Jersey Local Civil Rule of Civil Procedure 201.1

with Appendix M, Guideline for Arbitration

(f) The Court's supporting personnel including, among others, the Marshal, Deputy Marshals, the Clerk, Deputy Clerks, bailiffs, court reporters and employees or subcontractors retained by the Court-appointed official reporters, probation officers and their staffs, and members of the Judges' staffs, are prohibited from disclosing to any person, without authorization by the Court, information relating to a proceeding that is not part of the public record of the Court. The disclosure of information concerning *in camera* arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(g) The Court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of a party to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

Source: L.Civ.R. 105.1(a) - G.R. 36.A.; L.Civ.R. 105.1(b) - G.R. 36.B.; L.Civ.R. 105.1(c) - G.R. 36.C.; L.Civ.R. 105.1(d) - G.R. 36.E. (first clause); L.Civ.R. 105.1(e) - G.R. 36.E. (second and third clauses); L.Civ.R. 105.1(f) - G.R. 36.F; L.Civ.R. 105(g) - G.R. 36.G.

Civ. RULE 201.1 ARBITRATION

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(a) Certification of Arbitrators

(1) The Chief Judge shall certify as many arbitrators as determined to be necessary under this Rule. Arbitrators shall be designated for terms of service up to three years, subject to extension at the discretion of the Chief Judge, and all such terms shall be staggered to provide orderly rotation of a portion of the membership of the panel of arbitrators.

(2) An individual may be designated to serve as an arbitrator if he or she: (a) has been for at least five years a member of the bar of the highest court of a State or the District of Columbia, (b) is admitted to practice before this Court, (c) is determined by the Chief Judge to be competent to perform the duties of an arbitrator, and (d) has participated in a training program (or the

equivalent thereof) to the satisfaction of the Chief Judge.

(3) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. §453 before serving as an arbitrator.

(4) A list of all persons certified as arbitrators shall be maintained in the office of the Clerk.

(5) Each arbitrator shall, for the purpose of performing his or her duties, be deemed a quasijudicial officer of the Court.

(b) Designation of Compliance Judge

The Board of Judges shall designate a Judge or Magistrate Judge to serve as the compliance judge for arbitration. This compliance judge shall be responsible to the Board of Judges for administration of the arbitration program established by this Rule and shall be responsible for monitoring the arbitration processes; provided, however that the compliance judge shall not be responsible for individual case management.

(c) Compensation and Expenses of Arbitrators

An arbitrator shall be compensated $250 for service in each case assigned for arbitration. In the event that the arbitration hearing is protracted, the Court will entertain a petition for additional compensation. The fees shall be paid by or pursuant to an order of the Director of the Administrative Office of the United States Courts. Arbitrators shall not be reimbursed for actual expenses incurred by them in the performance of their duties under this Rule.

(d) Civil Cases Eligible for Compulsory Arbitration

(1) Compulsory Arbitration. Subject to the exceptions set forth in L.Civ.R. 201.1(d)(2), the Clerk shall designate and process for compulsory arbitration any civil action pending before the Court where the relief sought consists only of money damages not in excess of $150,000 exclusive of interest and costs and any claim for punitive damages.

(2) Exclusion from Compulsory Arbitration. No civil action shall be designated or processed for compulsory arbitration if the claim therein is

(A) based on an alleged violation of a right secured by the Constitution of the United States; or

(B) jurisdictionally based, on whole or in part, on (i) 28 U.S.C. §1346(a)(1) (tax refund actions) or (ii) 42 U.S.C. §405(g) (Social Security actions).

Upon filing its initial pleading a party may request that an otherwise eligible case not be designated or processed for compulsory arbitration if either circumstances encompassed within L.Civ.R. 201.1(e)(6) are present or other specific policy concerns exist which make formal

adjudication, rather than arbitration, appropriate.

(3) Presumption of Damages. For the sole purpose of making the determination as to whether the damages are in excess of $150,000 as provided in L.Civ.R. 201.1(d)(1), damages shall be presumed in all cases to be $150,000 or less, exclusive of interest and costs and any claim for punitive damages, unless counsel of record for the plaintiff at the time of filing the complaint or counsel of record for any other party at the time of filing that party's first pleading, or any counsel within 30 days of the filing of a notice of removal, files with the Court a document signed by said counsel which certifies that the damages recoverable exceed the sum of $150,000 exclusive of interest and costs and any claim for punitive damages. The Court may disregard any certification or other document complying with 28 U.S.C. § 1746 filed under this Rule and require arbitration if satisfied that recoverable damages do not exceed $150,000. No provision of this Rule shall preclude an arbitrator from entering an award exceeding $150,000 based upon the proofs presented at the arbitration hearing; and an arbitrator's award may also include interest, costs, statutory attorneys fees and punitive damages, if appropriate.

(e) Referral for Arbitration

(1) After an answer is filed in a case determined eligible for arbitration, the Clerk shall send a notice to counsel setting forth the date and time for the arbitration hearing consistent with the scheduling order entered in the case and L.Civ.R. 201.1(e)(3). The notice shall also advise counsel that they may agree to an earlier date for the arbitration hearing provided the Clerk is notified within 30 days of the date of the notice. In the event additional parties have been joined in the action, this notice shall not be sent until an answer has been filed by all such parties who have been served with process and are not in default.

(2) The arbitration hearing shall be held before a single arbitrator. The arbitrator shall be chosen by the Clerk from among the lawyers who have been certified as arbitrators by the Chief Judge. The arbitrator shall be scheduled to hear not more than three cases on a date or dates which shall be scheduled several months in advance.

(3) The Judge to whom the case has been assigned shall, at least 30 days prior to the date scheduled for the arbitration hearing, sign an order setting forth the date and time of the arbitration hearing and the name of the arbitrator designated to hear the case. In the event that a party has filed a motion to dismiss the complaint, for judgment on the pleadings, summary judgment or to join necessary parties, or proceedings are initiated under L.Civ.R. 201.1(e)(6), the Judge shall not sign the order required herein until the Court has ruled on the motion or order to show cause, but the filing of such a motion on or after the date of said order shall not stay arbitration unless the Judge so orders.

(4) The Plaintiff shall within 14 days upon receipt of the order appointing arbitrator send to the arbitrator ~~a~~ copies of any complaint, amended complaint and answers to counterclaim; counsel

for each defendant shall, within 14 days upon receipt of this order, send to the arbitrator any answer, amended answer, counterclaim, cross-claim and answer hereto, any third-party complaint. Upon receipt of these materials, the arbitrator shall forthwith inform all parties, in writing, as to whether the arbitrator, or any firm or member of any firm with which he or she is affiliated has (either as a party or attorney), at any time within the past five years, been involved in litigation with or represented any party to the arbitration, or any agency, division or employee of such a party.

(5)(A) Statutory Disqualification. Persons selected to be arbitrators shall be disqualified for bias or prejudice as provided in 28 U.S.C. §144, and shall disqualify themselves in any action in which they would be required under 28 U.S.C. §455 to disqualify themselves if they were a justice, judge, or magistrate judge.

(B) Impartiality. An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.

(C) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions.

i. An arbitrator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the arbitration.

ii. An arbitrator must disclose to the parties any close personal relationship or other circumstance which might reasonably raise a question as to the arbitrator's impartiality.

iii. The burden of disclosure rests on the arbitrator. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship. After appropriate disclosure, the arbitrator may serve if all parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator shall withdraw irrespective of the expressed desires of the parties.

iv. In no circumstance may an arbitrator represent any party in any matter during the arbitration.

v. An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with any party.

(6) Either *sua sponte*, or upon a recommendation received from the arbitrator, or upon the application of a party, the Judge to whom the case is assigned may exempt from arbitration any action that would otherwise be arbitrable under this Rule if (a) it involves complex or novel legal issues, or (b) the legal issues predominate over the factual issues, or (c) other good cause is shown. When initiating such a review either *sua sponte* or upon recommendation of the arbitrator, the Judge may proceed pursuant to an order to show cause providing not less than 14 days notice to all parties of the opportunity to be heard. Any application by a party to exempt an

action from arbitration shall be by formal motion pursuant to these Rules.

(f) Arbitration Hearing

(1) The arbitration hearing shall take place on the date and at the time set forth in the order of the Court. The arbitrator is authorized to change the date and time of the hearing, provided the hearing is commenced within 30 days of the hearing date set forth in the Court's order. Any continuance beyond this 30-day period must be approved by the Judge to whom the action is assigned. The Clerk must be notified immediately of any continuance.

(2) Counsel for the parties shall report settlement of the action to the Clerk and to the arbitrator assigned to that action.

(3) The arbitration hearing may proceed in the absence of any party who, after notice, fails to be present. In the event that a party fails to participate in the arbitration process in a meaningful manner, the arbitrator shall make that determination and shall support it with specific written findings filed with the Clerk. Thereupon, the Judge to whom the action is assigned shall conduct a hearing upon notice to all counsel and personal notice to any party adversely affected by the arbitrator's determination and may thereupon impose any appropriate sanctions, including, but not limited to, the striking of any demand for a trial *de novo* filed by that party.

(4) Fed. R. Civ. P. 45 shall apply to subpoenas for attendance of witnesses and the production of documentary evidence at an arbitration hearing under this Rule. Testimony at an arbitration hearing shall be under oath or affirmation.

(5) The Federal Rules of Evidence shall be used as guides to the admissibility of evidence. Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least 14 days prior to the hearing and the arbitrator shall receive exhibits into evidence without formal proof unless counsel has been notified at least seven days prior to the hearing that the adverse party intends to raise an issue concerning the authenticity of the exhibit. The arbitrator may refuse to receive into evidence any exhibit a copy or photograph of which has not been delivered to the adverse party, as provided herein.

(6) A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necessary arrangements for same and shall bear all expenses so incurred.

(g) Arbitration Award and Judgment

Within 30 days after the hearing is concluded, the arbitrator shall file under seal with the Clerk a written award, accompanied by a written statement or summary setting forth the basis for the award which shall also be filed under seal by the Clerk. Neither the Clerk nor any party or attorney shall disclose to any Judge to whom the action is or may be assigned the contents of the arbitration award except as permitted by 28 U.S.C. §657(b). The arbitration award shall be

unsealed and entered as the judgment of the Court after the time period for demanding a trial *de novo*, pursuant to L.Civ.R. 201.1(h), has expired, unless a party demands a trial *de novo* before the Court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any separable part of an arbitration award may be the subject of a trial *de novo* if the aggrieved party makes a demand for same pursuant to L.Civ.R. 201.1(h)
before the expiration of the applicable time period. If the aggrieved party fails to make a timely demand pursuant to L.Civ.R. 201.1(h), that part of the arbitration award shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal.

(h) Trial *De Novo*

(1) Any party may demand a trial *de novo* in the District Court by filing with the Clerk a written demand, containing a short and plain statement of each ground in support thereof, and serving a copy upon all counsel of record or other parties. Such a demand must be filed and served within 30 days after the arbitration award is filed and service is accomplished by a party pursuant to 28 U.S.C. §657(a), or by the Clerk (whichever occurs first), except that in any action in which the United States or any employee or agency thereof is a party the time period within which any party therein may file and serve such a demand shall be 60 days.

(2) Upon the filing of a demand for a trial *de novo*, the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of Court, for good cause shown. Any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(3) The Magistrate Judge shall conduct a pretrial conference within 60 days of filing of a demand for a trial *de novo*.

(i) Guidelines for Arbitration

The Court, the Clerk, the parties, attorneys and arbitrators are hereby referred to the Guidelines for Arbitration (Appendix M to these Rules) for their information and guidance in civil actions arbitrated pursuant to this Rule.

Amended: March 31, 1999, April 19, 2000, July 5, 2001, March 9, 2007, June 19, 2013
Source: G.R. 47.

Civ. RULE 301.1 MEDIATION

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SUBJECT HEADINGS **REFERENCE**

APPENDIX M. GUIDELINES FOR ARBITRATION
Revised May 18, 1989, December 19, 1991, December 22, 1993, April 1, 1997, April 19, 2000 and March 1, 2010

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I. Case Management Responsibility of the Assigned District Judge

The referral of civil actions to the Arbitration Program, pursuant to L.Civ.R. 201.1(d), does not divest the assigned District Judge and Magistrate Judge of the responsibility for exercising overall management control over a case during the pendency of the arbitration process, nor does it preclude the parties from filing pretrial motions or pursuing discovery.

The Arbitration Program has been revised to provide for a "compliance judge for arbitration." The duty of this judicial officer is to administer the arbitration program as a whole and to monitor the arbitration processes. Individual case management, however, remains at all times with the assigned District Judge or Magistrate Judge.

The management of cases referred to arbitration will continue to be subject to this Court's procedures regulating discovery and other pretrial matters, the applicable Federal Rules of Civil Procedure, and the Local Civil Rules of the Court. As in other cases, the dates for concluding pretrial discovery (including expert discovery) will be set at the scheduling conference under Fed. R. Civ. P. 16(b), and the parties will be required to complete all pretrial discovery before the arbitration hearing. Unlike other cases, these dates will not be extended except where a new party has been joined recently or an exceptional reason is presented to the Judge or Magistrate Judge. Extended discovery and the final pretrial conference will be eliminated. This means that approximately one (1) month following the filing of the last answer plus a 120-day discovery period, or at such other date as set by the scheduling order, the case will be set for arbitration through the Arbitration Clerk.

This procedure provides litigants with a prompt and less expensive alternative to the traditional courtroom trial and relieves the heavy burden of the constantly increasing case load. The Court intends for the resulting arbitration hearing to be similar in purpose to a bench trial but without the formality required by the Federal Rules of Evidence.

II. Arbitrator's Responsibility for Managing the Arbitration Hearing Process

A. Although the assigned District Judge retains overall responsibility for cases referred to the arbitration program, the Court delegates authority to the arbitrator to control and regulate the scope and duration of the arbitration hearing, including:

(1) Ruling upon the admissibility of testimonial evidence.
(2) Ruling upon the admissibility of documentary evidence.
(3) Ruling upon the admissibility of demonstrative evidence.
(4) Ruling upon objections to evidence.
(5) Ruling upon requests of counsel to excuse individual parties or authorized corporate

representatives from attending the arbitration hearing.

(6) Commencing the hearing in the absence of a party.

(7) Limiting the time for presentation of evidence and summary arguments by a party.

(8) Compelling the presence of witnesses, if desirable.

(9) Swearing witnesses.

(10) Adjourning the arbitration hearing to a date certain, not to exceed 30 days from court order date, to accommodate lengthy proceedings or an unavailable witness whom the arbitrator determines to be essential to the proceedings.

(11) Preparing the Arbitration Award. The scope of delegation to the arbitrator does not include the powers to:

(1) Exercise civil or criminal contempt.

(2) Continue the hearing for an indefinite period.

B. Arbitrator as Adjudicator. The arbitrator's role is as a non-jury adjudicator of the facts based upon evidence and arguments presented at the arbitration hearing. The arbitrator is not a mediator, and the arbitrator shall not convene a settlement discussion at any point in the arbitration process unless all litigants have first explicitly requested the arbitrator to preside over settlement discussions. The arbitrator may decline the parties' request for a settlement discussion if the arbitrator believes that such participation would bring his or her own impartiality into question if the matter is arbitrated. The Court expects that the arbitrator and counsel shall strive at all times to preserve the essential functions of a finder of facts at a hearing which, though less formal than a trial, nonetheless inspires similar confidence in the objectivity and validity of the fact-finding process.

III. Suggested Format for the Presentation of Evidence at Arbitration Hearings

The Court intends that attorneys shall be prepared to present evidence through any combination of exhibits, affidavits, deposition transcripts, expert reports and, if desirable, live testimony. The Court further expects that testimonial evidence shall be limited to situations involving issues of credibility of witnesses. Evidence shall be presented primarily through the attorneys for the parties, who may incorporate arguments on such evidence in their presentation. Expert opinion may normally be presented through written reports, although live expert testimony is desirable where helpful to resolving profound differences of opinion between such experts through direct and cross-examination. In a general sense, the Court envisions this presentation process to be somewhat similar to a combination of opening and closing arguments augmented by live testimony where necessary to aid the arbitrator's fact-finding function.

In developing their arguments, counsel may present only factual representations supportable by reference to discovery materials; to a signed statement of a witness; to a stipulation; to a document; or by a representation that counsel personally spoke with the witness and is repeating what the witness stated.

Arbitrators and counsel are reminded that L.Civ.R. 201.1(f)(5) notes that the Federal Rules of Evidence shall be employed as a guide; however, the Rules should not be construed in a manner to preclude the presentation of evidence submitted by counsel in the fashion discussed above. L.Civ.R. 201.1(f)(5) further requires, "Copies of photographs of all exhibits, except exhibits intended solely for impeachment, must be marked for identification and delivered to adverse parties at least 14 days prior to the hearing... ." To facilitate this exchange, counsel may obtain exhibit stickers from the Clerk's office. Copies of all exhibits exchanged must also be forwarded to the arbitrator at least 14 days prior to the hearing.

With respect to the admissibility and subsequent use of evidence offered at an arbitration hearing, counsel are reminded that L.Civ.R. 201.1(h)(2) provides:

> "Upon the filing of a demand for trial *de novo* ... the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration..."

Therefore, neither the fact that the case was arbitrated nor the amount of the arbitrator's award is admissible. However, testimony given upon the record of the arbitration hearing may be used to impeach the credibility of a witness at any subsequent trial *de novo*. In light of the limitation placed by the Court upon the use of

exhibits at subsequent Court proceedings, the arbitrator should return all exhibits to counsel at the conclusion of the arbitration hearing.

IV. Attendance of Parties; Participation in a "Meaningful Manner"

Although L.Civ.R. 201.1(f)(3) provides for the arbitration hearing to proceed in the absence of any party, the Court has determined that the attendance of the parties and/or corporate representatives is essential for the hearing to proceed in a meaningful manner. The goals of the arbitration program and the authority of the Court will be seriously undermined if a party were permitted to refuse to attend an arbitration hearing and then demand trial *de novo*. Accordingly the Court has, in the same Rule, allowed for the imposition of "appropriate sanctions, including, but not limited to, the striking of any demand for a trial *de novo*" filed by a party who fails to participate in the arbitration process in such a "meaningful manner." Failure by a party or counsel to follow these Guidelines will also be considered in determining whether there has been meaningful participation in the process.

V. Stenographic Transcript

A party desiring to have a recording and/or transcript made of the arbitration hearing shall make all necessary arrangements for same and shall bear all expenses so incurred.

VI. The Arbitration Procedure - A Summary

Upon receipt of the order referring the case to arbitration and appointing an arbitrator, counsel for plaintiff shall *promptly* forward to the arbitrator copies of *all pleadings* including any counterclaim or third party complaint and answers thereto. Thereafter, and at least *14 days* prior to the arbitration hearing, each counsel shall comply with L.Civ.R. 201.1(f)(5) by delivering to the arbitrator and to adverse counsel premarked copies of *all exhibits*, including expert reports and all portions of depositions and interrogatories, to which reference will be made at the hearing (but not including documents intended solely for impeachment). Failure to timely submit such exhibits may be deemed a failure to meaningfully participate in the process under L.Civ.R. 201.1(f)(3).

The arbitrator will have reviewed the pleadings prior to the arbitration hearing. At least one week prior to the scheduled date of the arbitration hearing, the arbitrator should conduct a conference call with the attorneys to determine whether live testimony will be necessary and who the witnesses will be.

The following is presented as an example of the agenda for a typical arbitration hearing; however, the arbitrator is empowered to define the scope and sequence of events at the hearing.

(1) Convening of the arbitration hearing and introduction of the arbitrator, counsel for the parties, and the parties.

(2) Brief procedural overview presented by the arbitrator.

(3) Opening statement by plaintiff's counsel.

(4) Opening statement by defendant's counsel.

(5) Presentation of evidence by plaintiff's counsel including, if desirable, live testimony.

(6) Presentation of evidence by defendant's counsel including, if desirable, live testimony.

(7) Summation by plaintiff's counsel.

(8) Summation by defendant's counsel.

(9) Adjournment of the arbitration hearing.

(10) Retirement of the arbitrator for deliberation and for documentation of the arbitration award.

VII. Scope of the Arbitration Award

The $150,000 limit of L.Civ.R. 201.1(d)(3)is jurisdictional for the purpose of referring cases to the program pursuant to L.Civ.R. 201.1. However, once a case has been referred to the program, the actual award need not be limited to $150,000. The arbitrator's award may also make provisions for interest and punitive damages if appropriate.

VIII. Processing the Arbitration Award

At the conclusion of the hearing, the arbitrator shall promptly file the award with the Clerk. When the award is filed, the Clerk's Office will docket the fact of the award, leaving out the details, and mail a copy

of the award and the arbitrator's written statement or summary setting forth the basis for the award to the arbitrator and counsel.

IX. Compensation of Arbitrators

In the event that an arbitration hearing is protracted, the District Judge to whom the matter is assigned may entertain a petition for additional compensation.

Although the Clerk's Office does not make any deductions from the compensation paid to arbitrators, it should be treated as ordinary income for tax purposes.

X. Alternative Dispute Resolution

After enactment of the Civil Justice Reform Act of 1990, then – General Rule 47 (now Local Civil Rule 201.1) was amended to provide for arbitration by consent of any civil action regardless of amount in controversy. Provision was also made for the parties to "consent to participation in any other form of alternative dispute resolution."

The Alternative Dispute Resolution Act of 1998 required the district courts to make at least one alternative dispute resolution "process" available to litigants. One such process could arbitration by consent. However, the act placed limitations on civil actions that could be referred to arbitration by consent, including a maximum dollar "value" of $150,000.

This Court has a compulsory arbitration program with the same limitations as are imposed for arbitration by consent under the Alternative Dispute Resolution Act of 1998. Accordingly, "consent" to arbitration becomes meaningless when an eligible civil action would be subject to compulsory arbitration. This led to amendment of Local Civil Rule 201.1 to delete the "arbitration by consent" provision.

It remains the intent of the Court to encourage parties to choose a particular form of alternative dispute resolution. Parties may agree to participate in the mediation process prescribed in L.Civ.R.301.1 or may participate in other forms of alternative dispute resolution such as, by way of example only, mini-trials or summary jury trials. Any such agreement between the parties must, however, be presented to the Judge or Magistrate Judge for approval, who shall consider it with due regard for the calendar and resources of the Court. Should the parties agree on some form of alternative dispute resolution, the District Judge may administratively terminate the civil action pending completion of the alternative dispute resolution procedure.

ATTACHMENT 6

District of New Jersey Local Civil Rule of Civil Procedure 301.1

With Appendix Q, Guidelines for Mediation

unsealed and entered as the judgment of the Court after the time period for demanding a trial *de novo*, pursuant to L.Civ.R. 201.1(h), has expired, unless a party demands a trial *de novo* before the Court. The judgment so entered shall be subject to the same provisions of law, and shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal. In a case involving multiple claims and parties, any separable part of an arbitration award may be the subject of a trial *de novo* if the aggrieved party makes a demand for same pursuant to L.Civ.R. 201.1(h)
before the expiration of the applicable time period. If the aggrieved party fails to make a timely demand pursuant to L.Civ.R. 201.1(h), that part of the arbitration award shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be the subject of appeal.

(h) Trial *De Novo*

(1) Any party may demand a trial *de novo* in the District Court by filing with the Clerk a written demand, containing a short and plain statement of each ground in support thereof, and serving a copy upon all counsel of record or other parties. Such a demand must be filed and served within 30 days after the arbitration award is filed and service is accomplished by a party pursuant to 28 U.S.C. §657(a), or by the Clerk (whichever occurs first), except that in any action in which the United States or any employee or agency thereof is a party the time period within which any party therein may file and serve such a demand shall be 60 days.

(2) Upon the filing of a demand for a trial *de novo*, the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of Court, for good cause shown. Any right of trial by jury that a party would otherwise have shall be preserved inviolate.

(3) The Magistrate Judge shall conduct a pretrial conference within 60 days of filing of a demand for a trial *de novo*.

(i) Guidelines for Arbitration

The Court, the Clerk, the parties, attorneys and arbitrators are hereby referred to the Guidelines for Arbitration (Appendix M to these Rules) for their information and guidance in civil actions arbitrated pursuant to this Rule.

Amended: March 31, 1999, April 19, 2000, July 5, 2001, March 9, 2007, June 19, 2013
Source: G.R. 47.

Civ. RULE 301.1 MEDIATION

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SUBJECT HEADINGS **REFERENCE**

(a) Designation of Mediators

(1) The Chief Judge shall designate as many mediators as determined to be necessary under this Rule. Mediators shall be designated for terms of service up to three years, subject to extension at the discretion of the Chief Judge, and such terms shall be staggered to provide orderly rotation of a portion of the membership of the panel of mediators.

(2) An individual may be designated to serve as a mediator if he or she:

(A) has been for at least five years a member of the bar of the highest court of a State or the District of Columbia;

(B) is admitted to practice before this Court;

(C) is determined by the Chief Judge to be competent to perform the duties of a mediator; and

(D) has participated in a training program (or the equivalent thereof) to the satisfaction of the Chief Judge.

(3) Each mediator shall, for the purpose of performing his or her duties, be deemed a quasijudicial officer of the Court.

(b) Designation of Compliance Judge

The Board of Judges shall designate a Judge or Magistrate Judge to serve as the compliance judge for mediation. This compliance judge shall be responsible to the Board of Judges for administration of the mediation program established by this Rule and shall entertain any procedural or substantive issues arising out of mediation.

(c) Compensation of Mediators

Each mediator designated to serve by the Chief Judge under L.Civ. R. 301.1 (a) shall be compensated $300 an hour for service in each civil action referred to mediation, which compensation shall be borne equally by the parties. Where all parties select as a mediator a person not designated as a panel mediator under L. Civ. R. 301.1 (a), the parties and the mediator may, by written agreement, fix the amount and terms of the mediator's compensation.

(d) Civil Actions Eligible for Mediation

Each Judge and Magistrate Judge may, without the consent of the parties, refer any civil action to mediation. The parties in any civil action may, with consent of a Judge or Magistrate Judge, agree to mediation and, if such consent is given, select a mediator. Notwithstanding the above, no civil action described in L.Civ.R.72.1(a)(3)(C), may be referred to mediation.

(e) Mediation Procedure

(1) Counsel and the parties in each civil action referred to mediation shall participate therein and shall cooperate with the mediator, who shall be designated by the compliance judge.

(2) Whenever a civil action is referred to mediation the parties shall immediately prepare and send to the designated mediator a position paper not exceeding 10 pages in length. The parties may append to their position papers essential documents only. Pleadings shall not be appended or otherwise submitted unless specifically requested by the mediator.

(3) Counsel and the parties (including individuals with settlement authority for specific individuals) shall attend all mediation sessions unless otherwise directed by the mediator.

(4) If the parties and the mediator agree, the mediation session may include a neutral evaluation by the mediator of the parties' positions on any designated claims, counterclaims, defenses or other material issues; and the parties and mediator may arrange a schedule within the mediation timetable for briefing and discussing such matters.

(5) The mediator may meet with counsel and the parties jointly or *ex parte*. All information presented to the mediator shall be deemed confidential unless requested otherwise and shall not be disclosed by anyone, including the mediator, without consent, except as necessary to advise the Court of an apparent failure to participate. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an admission.

(6) All proceedings (including motion practice and discovery) shall be stayed for a period of 90 days from the date a civil action is referred to mediation. Any application for an extension of the stay shall be made jointly by the parties and the mediator and shall be considered by the referring Judge or Magistrate Judge.

(f) Guidelines for Mediation

The Court, the Clerk, the parties, attorneys and mediators are hereby referred to the Guidelines for Mediation (Appendix Q to these Rules) for their information and guidance in civil actions referred to mediation pursuant to this Rule. Said Guidelines for Mediation shall have the same force and effect as the provisions of this Rule.

(g) Ethical Standards for Mediators

(1) Impartiality

A mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance. Impartiality implies a commitment to aid all parties, as opposed to an individual party, in moving toward an agreement.

(A) A mediator shall maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equity, and feasibility of proposed options for settlement.

(B) A mediator shall withdraw from mediation if the mediator believes the mediator can no longer be impartial.

(C) A mediator shall not accept or give a gift, request, favor, loan or any other item of value to or from a party, attorney, or any other person involved in and arising from any mediation process.

(2) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions

(A) A mediator must disclose to the parties and to the compliance judge any current, past, or possible future representation or consulting relationship with, or pecuniary interest in, any party or attorney involved in the mediation.

(B) A mediator must disclose to the parties any close personal relationship or other circumstance, in addition to those specifically mentioned in L.Civ.R. 301.1(g)(2)(A), which might reasonably raise a question as to the mediator's impartiality.

(C) The burden of disclosure rests on the mediator. All such disclosures shall be made as soon as practical after the mediator becomes aware of the interest or the relationship. After appropriate disclosure, the mediator may serve if all parties so desire. If the mediator believes or perceives that there is a clear conflict of interest, the mediator shall withdraw irrespective of the expressed desires of the parties.

(D) In no circumstance may a mediator represent any party in any matter during the mediation.

(E) A mediator shall not use the mediation process to solicit, encourage, or otherwise incur future professional services with any party.

(h) Grievance Procedure

Any grievance concerning the conduct of a mediator, attorney, or other participant in mediation

shall be in writing to the compliance judge within 30 days from the event giving rise to the grievance. The compliance judge may investigate the grievance and take such action in response thereto as may be appropriate, upon due notice to all affected persons or entities.

Amended: May 27, 1998, April 19, 2000, March 14, 2001, July 5, 2001, January 31, 2008.

Civ. RULE 401.1 MEDIA COVERAGE

(a) The taking of photographs and operation of audio or videotape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs, during the progress of and in connection with judicial proceedings, including proceedings before a Magistrate Judge, whether or not court is actually in session, is prohibited. Environs of the courtroom shall include the entire United States Courthouses at Camden, Newark and Trenton, including all entrances to and exits from said buildings. A Judge or Magistrate Judge may, however, permit the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record.

(b) In the discretion of any Judge, broadcasting, photographing, audio or videorecording of investitive, naturalization or ceremonial proceedings in a courtroom may be permitted under such conditions as the Judge may prescribe.
Source: G.R. 36.H.

RULE 501.1 POSSESSION AND USE OF ELECTRONIC EQUIPMENT

(a) Objective

This policy establishes that "Electronic Devices," as defined herein may be brought into courthouses subject to all appropriate security screening and that such Electronic Devices must be rendered inoperable in courtrooms and judicial chambers, unless use is authorized in such areas by the presiding judicial officer. A significant goal of this policy is to create circuit-wide consistency for the benefit of the public, attorneys and employees.

(b) Scope

This policy identifies authorized devices, establishes the classes of individuals who may possess authorized devices, sets out the basis for exceptions to the policy, and specifies guidelines for security screening and establishing areas where use of electronic devices may be prohibited. **The *use* of electronic devices in courthouses and courtrooms is subject to existing judiciary court policies regarding inappropriate and unauthorized activity**, including U.S. Judicial Conference prohibition against "broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto. . . ."

(c) Exception

APPENDIX Q. GUIDELINES FOR MEDIATION

January 29, 1993; amended February 24, 1994, April 1, 1997, May 27, 1998, April 19, 2000, July 5, 2001, January 31, 2008, March 1, 2010

I. Case Management Responsibility of the Assigned Judicial Officers; Stay of Proceedings

Mediation is intended to afford litigants a less expensive alternative to traditional litigation. L.Civ.R. 301.1, which provides for both compulsory and voluntary mediation, is expected to conserve the resources of litigants which would otherwise be expended in discovery and to concentrate those resources on meaningful and intensive settlement negotiation. Mediation is also intended to conserve judicial resources, enabling Judges and Magistrate Judges to concentrate on cases which have not been referred to mediation. The Court expects and requires both litigants and their attorneys to participate in mediation in good faith.

Any case pending in the Court may be referred to mediation by the assigned Judge or Magistrate Judge. However, there are certain categories of cases (described in L.Civ.R.72.1(a)(3)(C)) which the Court has determined are not generally appropriate for mediation. Moreover, any pending case (other than in these categories) may be referred to mediation if all parties consent.

The referral of cases to mediation does not divest the assigned Judge and Magistrate Judge of the responsibility for exercising overall management control over a case during the pendency of the mediation process. However when a case is referred to mediation all proceedings (including pretrial motions or the pursuit of discovery) are stayed for a 90-day period. The purpose of this stay is to afford a reasonable period of time within which to reach a settlement. If it appears that it would be futile to continue mediation efforts before the stay expires the mediator may request that the case be restored to the active calendar forthwith.

When the stay expires, a case which has not been settled will be restored to the active calendar, protecting the parties from an extended (and unfruitful) stay. L.Civ.R. 301.1(e)(5) does provide that the parties and the mediator may make a joint application for an extension of the stay, thus recognizing that certain cases may need additional time for settlement. This application shall be made to and considered by the referring Judge or Magistrate Judge.

L.Civ.R. 301.1(b) provides for the designation of a "compliance judge for mediation." The duty of this judicial officer is to administer the mediation program and resolve procedural or substantive issues which might arise. Any such issue (including recusal of a mediator) may be brought to the attention of the compliance judge by either the parties or the mediator.

II. Mediator's Responsibility for Managing the Mediation Process

A. When a case is referred to mediation the compliance judge shall designate a mediator or co-mediators as may be appropriate. With the designation of a mediator the Court has delegated to him or her the authority to control and regulate the mediation process, including:

(1) Communicating with counsel to establish an expedited schedule for, among other things, the submission of position papers and the selection of dates for first and subsequent mediation sessions.

(2) Communicating on an *ex parte* basis.

(3) Determining and designating the appropriate representatives of parties, including individuals with settlement authority or other specific individuals, to attend mediation sessions.

B. The function of the mediator is to serve as a neutral facilitator of settlement. The mediator is expected to conduct the mediation process in an expeditious manner. Neither the parties nor the mediator may disclose any information presented during the mediation process without consent. The only exception to this rule of confidentiality is when disclosure may be necessary to advise the compliance judge of an apparent failure to participate in the mediation process.

Mediation, unlike arbitration, is not intended to be a fact-finding or decision-making process. Instead, the focus of mediation is to resolve the dispute between the parties. Resolution of that dispute may lead the parties and the mediator to explore questions of law or issues of fact beyond the scope of the pleadings or

to reach settlements which go beyond the relief sought in the pleadings. Furthermore, a mediation may include the submission of "claims, counterclaims, defenses and other material issues" to the mediator for his or her evaluation as a neutral at any point in the mediation, should the parties agree. See L.Civ.R.301.1(e)(4). The purpose of neutral evaluation by the mediator is to secure his or her views on material issues which, often because of contrary position strongly held by the parties, are erecting barriers to a negotiated settlement. Such a neutral evaluation may result in an advisory opinion as to the strengths an/or weaknesses of a party's legal or factual position on an issue so presented to the mediator. It is anticipated that, upon completion of any such evaluation and its assessment by the parties, either the action will settle or the mediation will resume to its conclusion. In short, mediation is a flexible process which may be molded to fit the needs of a particular case. No specific procedures have been set for the mediator to follow. Instead, the intent of L.Civ.R. 301.1 is for the mediator to assist the parties to reach a negotiated settlement by conducting meetings, defining issues, defusing emotion and suggesting possible ways to resolve the dispute.

III. Attendance of Parties; Participation in a Meaningful Manner

The attendance of the parties or their representatives may be deemed by the mediator to be appropriate for mediation to proceed in a meaningful manner. Moreover, one of the goals of the mediation program is to involve both parties and attorneys more intimately. Likewise, the assurance of confidentiality furthers the intimate involvement of parties and attorneys as well as the frank and open discussion required for mediation to succeed. Accordingly, appropriate sanctions may be imposed on any party or attorney who fails to participate in a meaningful manner or to cooperate with the mediator or who breaches confidentiality.

IV. Compensation of Mediators

A. A mediator who is selected by the court or by the parties from the panel of mediators designated by the Chief Judge shall be compensated at the rate of $300.00 an hour. The time incurred by a mediator in reviewing the submissions of the parties shall be included in the calculation of his or her time. The compensation, which shall be paid equally by the parties, may not be varied by the consent of the parties.

B. A mediator who is selected by the parties who is not a member of the panel of mediators designated by the Chief Judge may be compensated according to the amount and terms mutually agreed to by the mediator and the parties. Such agreement must be in writing.

V. Mediation by Consent

If all parties consent to have a case referred to mediation the parties may request the appointment of a mediator from the panel approved by the Chief Judge or may select any other individual or organization to serve as the mediator.

ATTACHMENT 7

National Flood Insurance Program (NFIP) –

The Sandy Claim Process (FEMA)

National Flood Insurance Program (NFIP);

The Sandy Claim Process

FEMA

Role of the Adjuster

- Help the policyholder file their claim
- Understand the policyholder's claim by fully investigating the loss
- Inform the policyholder of:
  - Standard Flood Insurance Policy (SFIP) Coverage
  - Scope of the Covered Loss
  - Claim Process
  - What info is needed to settle the claim
  - Recommends a loss payment amount
- The adjuster has no authority to deny or approve

FEMA

FEMA Bulletin W-12092a

- For Sandy waived the policyholder's requirement of a signed proof of loss in order for the NFIP insurer to pay a claim
- NFIP insurer could pay based on adjuster's report of the loss and payment recommendation after approval by insurer
- If policyholder requests additional payment, all terms and conditions of the SFIP would apply, including Sec. VII. J. Policyholder Requirements in Case of Loss includes sending directly to the insurer, a fully completed proof of loss, signed and sworn-to by the policyholder, with documentation required to support the amount requested within the filing deadline
- Proof of Loss filing period was extended one-year, now further extended to two years from the date of loss, October 29, 2014

FEMA

Payment of the Loss or Denial, In Whole or In Part

- Insurer pays the loss based on the adjuster's report
- Notifies the policyholder of the special claim procedures (W-12092a)
- NFIP insurer issues a written denial (disallowance) of the claim, in whole or in part
  - Explain what is denied and the dollar amount (if applicable)
  - Include the proper SFIP citation
  - Policyholder options per SFIP, Sec. VII. M. (2):
    - Accept denial
    - Submit an amended Proof of Loss
    - Appeal to FEMA within 60-days
    - Right to file suit in U.S. District Court within one-year of the NFIP insurer's initial denial

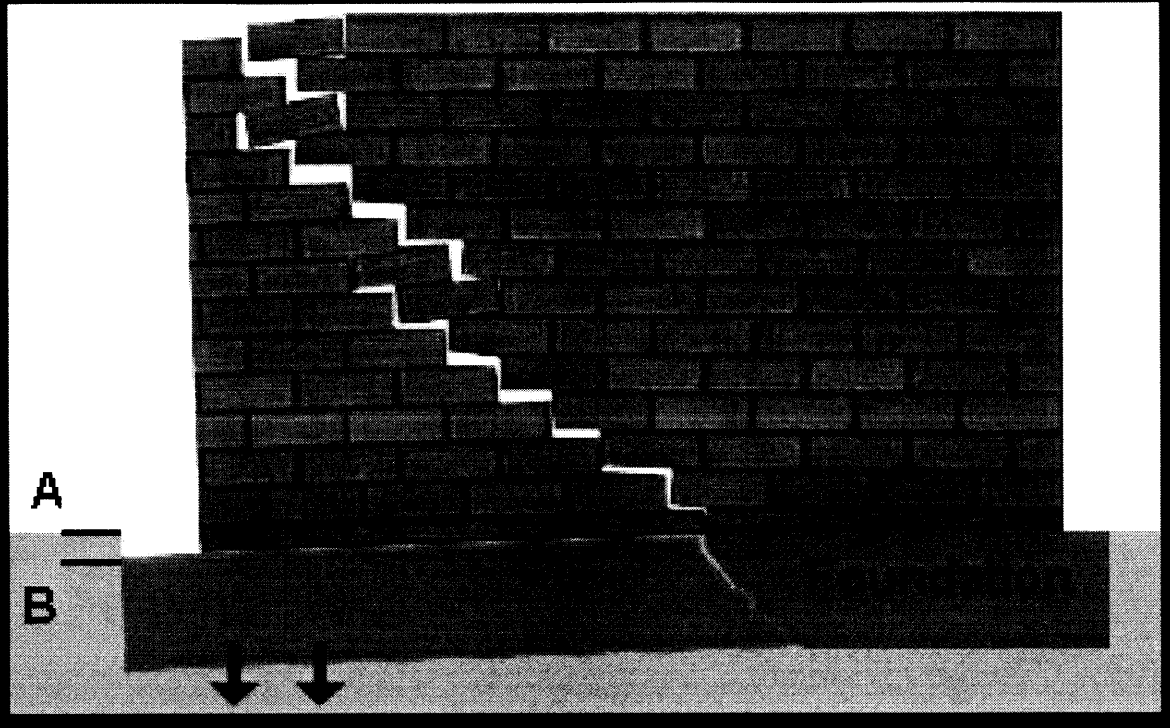
FEMA

SFIP Coverage

- Direct Physical Loss By or From Flood to the Policyholder's Insured Property
  - Insuring agreement under Section I.
  - Damage caused directly by or from flood
  - There must be evidence of physical change
  - No coverage for damage due to Earth Movement
    - Even if it is caused directly or indirectly by flood
    - Unless evidence of surface scour or undermining due from waves or surging currents of water (velocity flow)
  - No coverage for damage due to moisture, mold or mildew that is within the policyholder's control
  - The SFIP is not a valued policy

FEMA

Typical Earth Movement Damage



Damage caused by land subsidence or the destabilization of land due to the accumulation of water in subsurface land area, without evidence of sudden erosion or undermining by waves or currents of water to the ground beneath or adjacent to the insured building during a flood, is not covered by the SFIP

FEMA

SFIP Coverage

- Coverage A - Building Property
  - One building per policy, except a detached garage used for parking of an automobile and storage of household property (Dwelling Form only)
  - Certain specific extensions and additions
  - Specific listed items are only covered under Building Coverage
- Coverage B – Personal Property
  - Under a Dwelling Form, within a building at the described location
  - Under a General Property Form, within the bldg. at the described location
  - Certain listed content items are covered only under Personal Property Coverage
  - Special Limit of $2,500.00 total for art, collectibles, furs, jewelry, and the like, and personal property used in business (Dwelling Form only)

FEMA

SFIP Coverage

- Coverage C – Other Coverages (Debris Removal)
  - Insured property (building and personal property) anywhere
  - Non-owned flood-borne debris on, in or against the insured property (building)
- Coverage D – Increased Cost of Compliance (ICC)
  - Insured building declared substantially damaged from flood by the community and orders compliances with its floodplain management ordinance
  - Certain eligibility and conditions must be met
  - Up to $30,000.00 towards approved compliance activities –

    Flood-proofing, relocation, elevation, demolition, or any combination thereof

FEMA

Coverage Limitations

- Basement
  - Any area of the building having its floor below the ground level on all sides
  - Coverage limited to only those items listed at Sec. III. A(8) and B(3)
  - Limitations apply regardless of Flood Zone or date of construction
  - Contents coverage (when purchased) for only clothes washer & dryer, food freezer (not a walk-in), and the food within any freezer
- Post-FIRM Elevated Building
  - Coverage limitations, like in a basement , in the area below the lowest elevated floor - Sec. III. A(8) and B(3)
  - Built after the community issued its initial Flood Insurance Rate Map (FIRM)
  - Located within a Special Flood Hazard Area (SFHA)
- Detached Garage limited to 10% of building coverage, unless insured separately - Dwelling Form only – not an additional amount of insurance

FEMA

A Basement by SFIP Definition

Typical basement - floor level is below the ground level on all sides; most of the height of the walls are below ground level on all sides and the door of egress is also below ground level on all sides

FEMA

A Basement by SFIP Definition

Another basement - floor level is below the ground level on all sides; the lower half of the walls are below ground level on all sides and the egress is also below ground level on all sides

FEMA

A Basement by SFIP Definition

Another basement - floor level is below the ground level on all sides; the lower half of the walls are below ground level on all sides and the egress is also below ground level on all sides

FEMA

A Basement by SFIP Definition

Another basement - floor level is below the ground level on all sides; the lower half of the walls are below ground level on all sides and the egress area, enlarged as a sunken patio, is also below ground level on all sides

FEMA

Not a Basement by SFIP Definition

Floor level is not below the ground level on all sides; egress area is not below ground level on all sides, and the surface gradient of the ground adjacent to the at ground level floor area continuously slopes downward to the boundary of the described premises (positive drainage)

FEMA

Not a Basement by SFIP Definition

Floor level is not below the ground level on all sides; egress area is not below ground level on all sides, and the surface gradient of the ground adjacent to the at ground level floor area continuously slopes downward to the boundary of the described premises (positive drainage)

FEMA

Not a Basement by SFIP Definition

Floor level is not below the ground level on all sides; egress area is not below ground level on all sides, and the surface gradient of the ground adjacent to the at ground level floor area continuously slopes downward to the boundary of the described premises (positive drainage)

FEMA

Pre-FIRM Elevated Building

Built before the community was issued its initial Flood Insurance Rate Map (FIRM); no coverage limitation to the area below the Lowest Elevated Floor (LEF)

FEMA

Post-FIRM Elevated Building

Built after the community was issued its initial Flood Insurance Rate Map (FIRM); coverage limitations apply to the area below the Lowest Elevated Floor (LEF).

FEMA

Excluded Coverage

- Anything located outside the building's perimeter exterior walls including, but not limited to:
  - A detached carport, shed
  - Debris in the yard, landscape lightning, fences
  - Driveways, sidewalks, patios
  - Underground items such water or sewer lines and septic systems
  - Walkways, docks, piers, bulkheads
  - Detached garages used for residential, business, or farming purposes
  - Decks, except for egress:
    - In and out of the building
    - When impaired
    - Includes maximum 16 SF platform for a landing, steps and staircases, support rails and posts

FEMA

Excluded Losses

- Loss of rent, revenue, or profit
- Loss of use or access
- Business interruption or a
- Additional living expense
- Cost of complying with any ordinance or law (except for Coverage D - ICC)
- Any other economic loss
- Damage due to fire, wind, rain, earth movement, and non-flood related water, mold or mildew

FEMA

Loss Payment

- All Payments Based on Actual-Cash Value (ACV):
  - Dwellings insured to less than 80% of replacement cost value
  - Dwellings other than a Single Family Dwelling
  - Rental or tenant-occupied
  - Non-Residential or commercial buildings
  - Detached garages or storage buildings
  - Personal Property

FEMA

Loss Payment

- Replacement Cost Coverage is available for:
  - A Single Family Dwelling which is the policyholder's principal residence 80% of the year preceding the loss, and insured to 80% of its replacement cost value or the statutory maximum ($250,000.00)
  - A Condominium Building insured under the Residential Condominium Building Association Policy (RCBAP), if insured to 80% of replacement cost value (if not, co-insurance applies)
- Special Loss Settlement for certain Mobile-Home losses
- Proportional Loss Settlement for a policyholder's Single Family Dwelling and principal residence when advantageous than ACV

FEMA

Other Insurance

- When other (non-SFIP) flood insurance is involved, the SFIP will not pay more than the amount of insurance the policyholder is entitled to for the damaged property
  - The SFIP will be primary, subject to it own deductible, up to the limit of the deductible in the other flood policy, then the SFIP will pay only the proportion of the covered loss that the amount of insurance that applies bears to the total amount of insurance covered the loss
  - If the other policy has a provision stating it is excess insurance, then the SFIP will be primary
- If the other insurance is also a SFIP and the property involves a condominium, the SFIP which insures the condominium association will be primary

FEMA

Loss Estimate

- Adjuster's loss assessment and recommendation should include all SFIP-covered items damaged by floodwater and the determination of what needs to be done:
  - Clean, Repair, Refinish, or Replace
- Loss Settlement:
  - Like kind and quality repair or replacement
  - Reasonable and necessary amount spent to repair or replace
  - Not in excess of the ACV (or replacement cost value, if applicable) or the full amount of insurance, whichever is less

FEMA

Proper Scope of Loss is Essential

Most damaged doors can be replaced with a pre-hung unit complete with jamb, trim sets and hinges; others may need to be job-built

The scope to paint an 8 foot tall wall due to a 4 foot drywall replacement scope, is different than an 8 foot replacement scope

FEMA

Loss Estimate

- Foundation damage needs to be documented by a report from a licensed engineer
- Determination of a SFIP-defined basement or Post-FIRM elevated building, may require an Elevation Certification or an elevation study from a licensed surveyor or engineer
- Professional water mitigation charges need to be supported with an itemized room-by-room invoice and a properly completed drying log, per drying industry standard (Institute of Inspection, Cleaning and Restoration Certification)

FEMA

Loss Estimate

- Scope of loss should take into account:
  - Required labor, material and equipment usage in order to facilitate the removal and repair of damaged property - (Uninsured or non-covered building property, personal property cannot be part of the SFIP-covered loss estimate)
  - Proper room measurements including the deductions for excessive door and window openings and missing or open wall areas (unit-cost includes material waste)

FEMA

Differences in Scope of Loss Due to Room Measurements

Certain areas of the buildings may have a considerable number of door and window openings, missing or open wall areas, or ceilings which are higher, cathedral, vaulted or coffered - photographs should document

FEMA

Loss Estimate

- Unit pricing should be reasonable and customary to the loss and the location:
  - Account for unique conditions

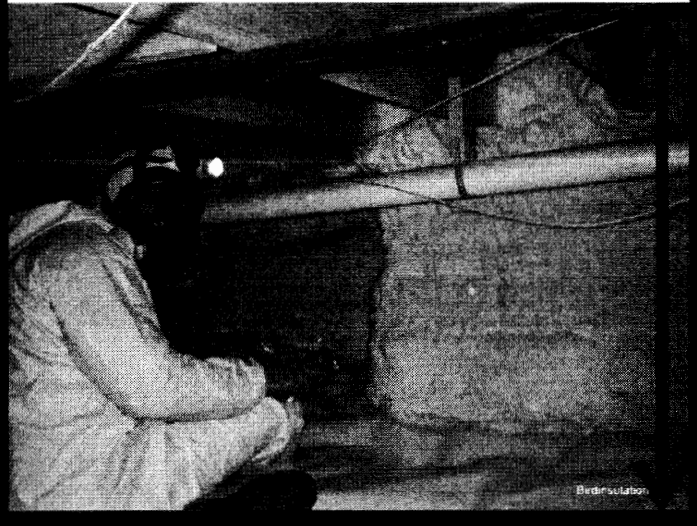
    EXAMPLE – INCREASED LABOR FOR WORK PERFORMED HIGHER THAN GROUND LEVEL, WITH RESTRICTED MOVEMENT OR LIMITED ACCESS
  - Reflect the quality of the item damaged

    EXAMPLE – GENERIC PRE-HUNG EXTERIOR DOOR UNIT vs. 3'0x6'8 STAIN-GRADE SOLID-WOOD PANELED EXTERIOR JOB-BUILT DOOR
- Unit Pricing should reflect quantities involved –
  - Higher quantities cost less per unit then a lower quantity of the same item

FEMA

Differences in Unit Pricing Related to Condition

30 inch high head clearance



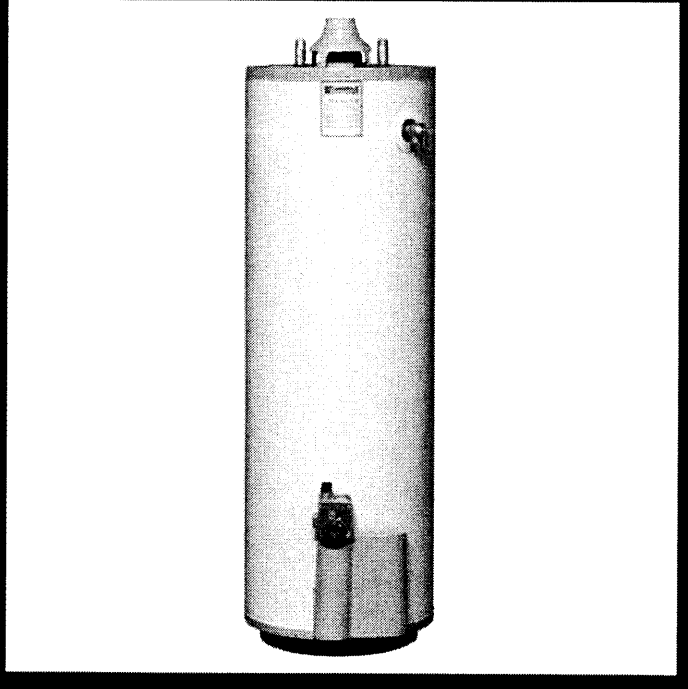
12 foot high wall

All things equal, the unit-price to repair flood damage building material in an area with restricted movement or limited access, requires more labor time than in an area with free movement and open access

FEMA

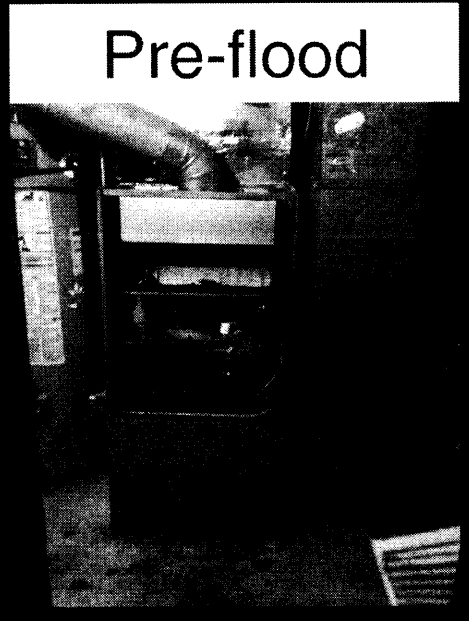
Differences in Unit Pricing Related to What is Considered Reasonable and Customary (R&C)

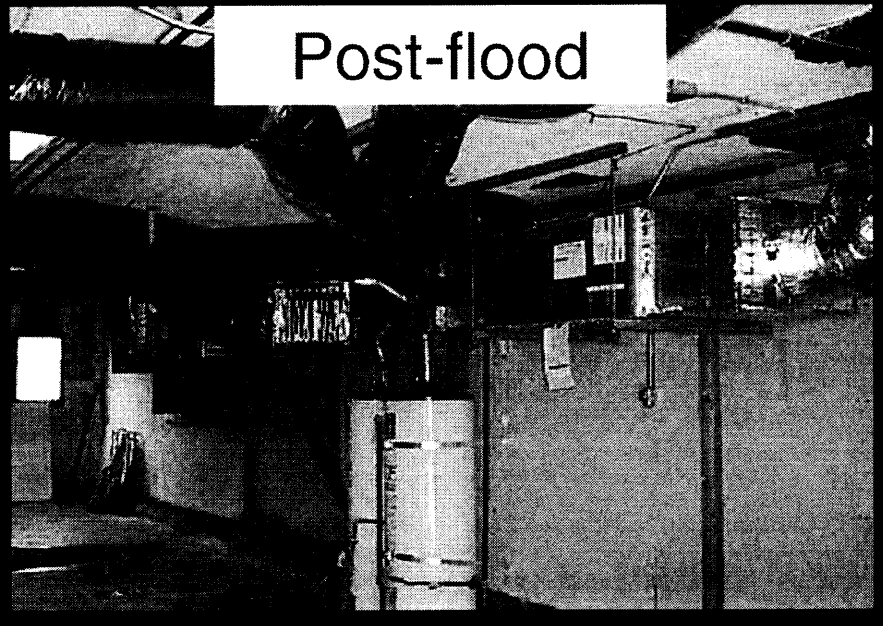
With a request for an additional payment, all things equal, repair and replacement of required building appliances performed shortly after a disaster which are supported with a paid receipt, costs considerably more than the same appliance estimated many months later, which are yet to be installed.



FEMA

Differences in Unit Pricing Related to a Betterment or Improvement





The additional cost related to the repair or replacement of flood-damaged building material with better quality material, workmanship, or improved location is not covered by the SFIP, even if code required

FEMA

Adjuster and Insurer Compensation

- Adjuster compensation:
  - Based on the replacement cost of the loss before depreciation
  - Fee schedule revised November 2, 2012
- NFIP insurer compensation:
  - Based on payable loss

The adjuster and NFIP insurer are incented to pay the full and proper amount to the policyholder - the greater the loss payment, the more money they receive - FEMA oversight audits test improper payments, over and under

FEMA

Problems Encountered with Some Additional Payment Requests

- Policyholder's Proof of Loss is not fully documented:
  - Includes items not covered by SFIP
  - Insured demolished or discarded property prior to inspection, Proof of Loss submission, or the request for additional payment
  - Pricing is inflated and beyond reasonable and customary but includes no valid explanation or justified reason
  - Estimate of repair is not detailed or itemized enough for the NFIP insurer to perform a proper comparison with the adjuster's estimate
  - Requested payment amount based on estimates when repairs are complete

Policyholder has the responsibility to "prove the loss"

FEMA

Requirements in Case of Loss

- Request for additional payment must be supported by a Proof of Loss:
  - Written statement of the amount of money the policyholder is requesting
  - Supports the policyholder's claim
  - Signed and sworn-to by the policyholder
  - Must be fully completed and include the details of the loss as required by Sec. VII. J. (3) and (4)
  - Includes the documentation which supports the claim and supports the dollar amount requested, Sec. VII. J. (5)

FEMA

What is Supporting Documentation?

- For a building loss it includes, but is not limited to:
  - Paid receipts or invoices for completed repairs
  - Itemized room by room contractor-signed estimates (if not repaired)
  - Photographs of the damage and of repairs in progress or completed
  - A concise written narrative
  - Any other relevant information
- For a personal property loss it includes, but is not limited to:
  - Room by room itemized list of damages with description and year of purchase
  - Cost to repair or replace at today's market including all taxes, delivery & setup
  - Written statement or estimate of repair or replacement
  - Pre-flood and post-flood photographs
  - Evidence of ownership, purchase price, and location at the time of loss.

FEMA

Resources

- FEMA Library
  - Flood Insurance Claim Handbook
  - NFIP Summary of Coverages
  - SFIP forms – found at 44 C.F.R. § 61 Apps. A (1-3):
    - Dwelling Form
    - General Property Form
    - Residential Condominium Building Association Policy (RCBAP) Form
  - Increased Cost of Compliance Brochure(s)
    - ICC F-300 How You Can Benefit (general information)
    - ICC F-663 Creating a Safer Future (ICC process)
  - Proof of loss form

For more information go to FloodSmart.gov

FEMA

ATTACHMENT 8

Important SFIP Policy Provisions and Requirements in Case of Loss

Standard Flood Insurance Policy
Earth Movement Exclusion Underlying Principles

DIRECT CAUSATION – The Standard Flood Insurance Policy (SFIP) is a single risk policy that covers only direct physical loss by or from flood. Because the SFIP requires direct causation, the policy does not cover damage resulting from an intervening cause of loss, even if flooding is the indirect or proximate cause of subsequent damage. Also, the SFIP expressly excludes "loss caused directly by earth movement even if the earth movement is caused by flood." This excludes damage to covered structures caused when flood waters saturate soils, causing the soil below ground level to expand, compact, destabilize, form voids or rot organic matter when the soil dries. FEMA included the exclusion to clarify that earth movement was not covered and to avoid policyholder confusion over causation.

LAND SUBSIDENCE – Land subsidence is a gradual settling or sudden sinking of the Earth's surface caused by subsurface movement of earth materials. Other water-related events, such as rain, rising water tables, and spring tides can also saturate soils, resulting in land subsidence. Another cause of land subsidence can be the draining of an aquifer system. All of the above can cause the Earth's surface and everything built upon it to settle or sink. If the subsoil is destabilized and the ground level does not sink uniformly, differential settlement will result, causing one part of a building to sink and not another part.

DEFINITE LOSS – One of the characteristics of an insurable risk is "Definite Loss," that is, if a risk is to be insured, any loss must take place at a known time, in a known place, and from a known cause. In other words, if the loss is not definite it is not insurable. Damage from land subsidence often occurs over time, and the cause of land subsidence and resulting damage is often unknown, and cannot be attributed to a single event.

NO LOOPHOLE – The earth movement exclusion is not new and has been included in the SFIP since 1983. This exclusion has been analyzed, contested, and addressed following other major flooding events, including The Great Mississippi Flood of 1993, The Red River Flood of 1997, Hurricanes, Floyd, Isabel, Ivan, Katrina, and Ike. During the late 1990s, FEMA attempted to provide limited earth movement coverage, but attributing claimed damage to a specific loss proved problematic, and the experiment ended with the publication of the December 31, 2000 edition of the SFIP which removed the limited earth movement coverage.

PREMIUM – The NFIP does not charge premium for earth movement. Adding earth-movement causes of loss to the coverage provided by the SFIP would greatly increase the insurance risks assumed by the NFIP, and the premium paid by NFIP policyholders for flood coverage would increase substantially to reflect the increased risk. These additional premium charges would add to the premium increases mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 and could render SFIPs unaffordable to most current policyholders.

Definition of a Basement, Section II. B.

5. Basement. Any area of the **building**, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

Definition of a Post-FIRM elevated building

14. Elevated Building. A **building** that has no **basement** and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

23. Post-FIRM Building. A **building** for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

26. Special Flood Hazard Area. An area having special **flood**, or **mudflow**, and/or **flood**-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1-A30, V1-V30, VE, or V.

III. Property Covered. Paragraph A. Coverage A – Building Property

We insure against **direct physical loss by or from flood** to:

8. Items of property in a **building** enclosure below the lowest elevated floor of an **elevated post-FIRM building** located in Zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a **basement,** regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;
(2) Cisterns and the water in them;
(3) Drywall for walls and ceilings in a **basement** and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
(4) Electrical junction and circuit breaker boxes;
(5) Electrical outlets and switches;
(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the **base flood** elevation after September 30, 1987;
(7) Fuel tanks and the fuel in them;
(8) Furnaces and hot water heaters;
(9) Heat pumps;
(10) Nonflammable insulation in a **basement**;
(11) Pumps and tanks used in solar energy systems;
(12) Stairways and staircases attached to the **building**, not separated from it by elevated walkways;
(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;
(15) Well water tanks and pumps;
(16) Required utility connections for any item in this list; and
(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a **building.**

b. Clean-up.

III. Property Covered, Paragraph B. Coverage B – Personal Property

3. Coverage for items of property in a **building** enclosure below the lowest elevated floor of an **elevated post-FIRM building** located in Zones A1-A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1-A30, V1-V30, or VE, or in a **basement,** regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;
b. Clothes washers and dryers; and
c. Food freezers, other than walk-in, and food in any freezer.

J. Requirements in Case of Loss

In case of a **flood** loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged property showing the quantity, description, **actual cash value,** and amount of loss. Attach all bills, receipts, and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the **policy** signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;
b. A brief explanation of how the loss happened;
c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
d. Details of any other insurance that may cover the loss;
e. Changes in title or occupancy of the covered property during the term of the **policy**;
f. Specifications of damaged **buildings** and detailed repair estimates;
g. Names of mortgagees or anyone else having a lien, charge, or claim against the covered property;
h. Details about who occupied any insured **building** at the time of loss and for what purpose; and
i. The inventory of damaged personal property described in **J.3.** above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

ATTACHMENT 9

The View from FEMA - National Flood Insurance Program (NFIP)

National Flood Insurance Program (NFIP)

Ramoncito J. deBorja, Deputy Associate Chief Counsel

FEMA

What is the National Flood Insurance Program?

- The NFIP helps to reduce flood losses by providing affordable flood insurance to property owners
- A Federal program enabling property owners in participating communities to purchase flood insurance protection
- An alternative to disaster assistance
- Based on an agreement between the community and the Federal Government

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The NFIP's Three-Legged Stool

- Insurance
- Risk Identification – Mapping
- Risk Reduction – Mitigation

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Mission of the NFIP

- To educate property owners about the risk of flood
- To provide flood insurance
- To accelerate recovery from flood
- To mitigate future flood losses
- To reduce the personal and national costs of disaster

FEMA

Benefits of the NFIP

- Protects property owners from risk
- Lowers the cost to taxpayers
- Helps businesses re-open and communities back on their feet

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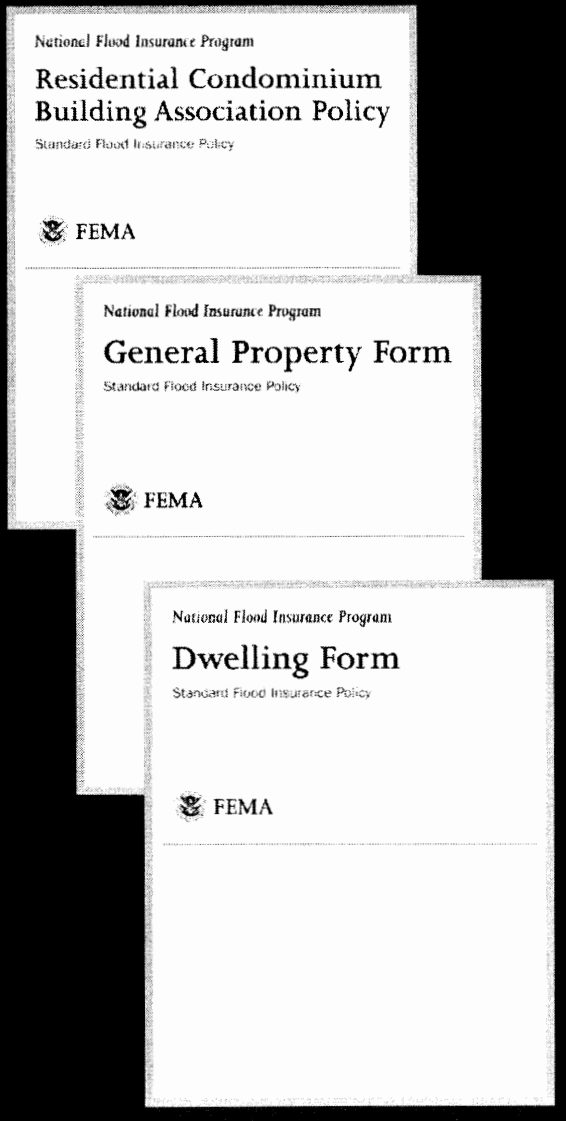
The Write Your Own Program (WYO)

- ❑ Established 1983
- ❑ Greater Spread of Risk
- ❑ Customer Service
- ❑ Company Name
  - Fiscal Agents of Federal Government
- ❑ Expense Allowance
  - – Policy and Claims

FEMA

The Standard Flood Insurance Policy ("SFIP")

- Three forms
  - –Dwelling Form
  - –General Property Form
  - –Residential Condominium Building Association Policy (RCBAP)
    - Codified at 44 C.F.R. Pt. 61 Apps A(1-3)



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Regular Program Limits

- Residential building - $250,000
  - Contents - $100, 000
- Non-Residential building - $500,000
  - Contents - $500,000
- Residential Condo Bldg. Assoc. - $250,000 X number of units
  - Contents $100,000

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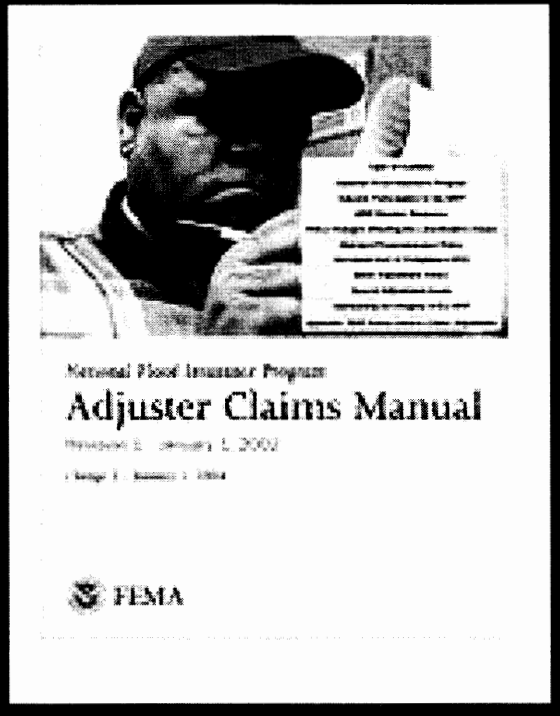
NFIP Adjusters

- Specialized Knowledge
- Certification
- Paid by according to fee schedule
- Areas of Authorization
  - Residential
  - Commercial (Large and Small)
  - Manufactured (Mobile) Hoe
  - Residential Condominium Building Association Policy (RCBAP)

FEMA

NFIP Adjuster Claims Manual



http://www.fema.gov/media-library/assets/documents/2675

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Important NFIP Concepts

- The SFIP pays only for direct physical loss by or from flood
- We rely on information provided by the insured or their insurance agent.
- We have the right to review the information provided at any time and to revise the policy based on our review.
- SFIP, Article I

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Important NFIP Concepts (cont.)

- Exclusions, Article V.
  - Earth movement
  - Water, moisture, mildew, or mold damage

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Important NFIP Concepts (cont.) - Basements

All three forms of the SFIP at Article II, (b)(5) define a basement as:

"[a]ny area of the building, including any sunken room or sunken portion of a room, having its floor below ground level on all sides."

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Below Lowest Elevated Floor (Post-FIRM) and Basements

1. Central air conditioners
2. Cisterns and the water in them
3. Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
4. Electrical junction and circuit breaker boxes;
5. Electrical outlets and switches;
6. Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30/1987
7. Fuel tanks and the fuel in them;
8. Furnaces and hot water heaters
9. Heat pumps;
10. Nonflammable insulation in a basement;
11. Pumps and tanks used in solar energy systems;
12. Stairways and staircases attached to the building, not separated from it by elevated walkways;
13. Sump pumps;
14. Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumber;
15. Well water tanks and pumps;
16. Required utility connections for any item in this list; and
17. Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b) Clean-up

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Important NFIP Concepts (cont.) - Loss Settlement Clause

V. Loss Settlement
1. Introduction
This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property . . .

If qualified for Replacement Cost, the follow apply:
(1) The building limit of liability shown on your Declarations Page;
(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or
(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

Article, VII, V.

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Other Important Concepts

- **Improper Payments Information Act** of 2002 (IPIA) (31 U.S.C. 3321)
- **Improper Payments Elimination and Recovery Improvement Act of 2012** (IPERIA) (31 U.S.C. 3321)
- **Audits and Reviews**

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