



Catastrophe Insurance (C) Working Group

March 29, 2015
Phoenix, AZ

Date: 3/17/15

2015 Fall National Meeting
Phoenix, Arizona

CATASTROPHE INSURANCE (C) WORKING GROUP

Sunday, March 29, 2015

11:00 a.m. – 12:30 p.m.

Sheraton Phoenix Downtown—Encanto—2nd Level

ROLL CALL

Kevin M. McCarty, Chair	Florida	Mike Chaney	Mississippi
Charles Angell	Alabama	Angela Nelson	Missouri
Marty Hester	Alaska	Peter L. Hartt	New Jersey
Ron Dahlquist	California	Tom Botsko	Ohio
George Bradner	Connecticut	Cuc Nguyen/Brian Gabbert	Oklahoma
Gordon I. Ito	Hawaii	Joseph Torti III/Paula Pallozzi	Rhode Island
Robert P. Rapp	Illinois	Will Davis	South Carolina
Martin Hazen	Kansas	Michael Humphreys	Tennessee
James J. Donelon	Louisiana	Mary Bannister/Rebecca Nichols	Virginia
Joy Hatchett	Maryland	Nancy Olsen	Wyoming
Kevin Beagan/Caleb Huntington	Massachusetts		

AGENDA

1. Consider Adoption of its Nov. 17 Minutes—*Kevin M. McCarty (FL)* Attachment A
2. Receive an Oral Report Regarding the Activities of the Post-Catastrophe Regulatory Guidance (C) Subgroup and Consider Adoption of its Feb. 17 Minutes—*Paula Pallozzi (RI)* Attachment B
3. Receive an Oral Report Regarding the Activities of the Consumer Outreach and Assistance Post-Disaster (C) Subgroup and Consider Adoption of its March 16 Minutes—*Angela Nelson (MO)* Attachment C
4. Receive Update Regarding National Flood Insurance Program (NFIP) and Catastrophe Legislation—*Brooke Stringer (NAIC)*
5. Hear Presentation Regarding the RiskInsight U.S. Storm Surge Model—*Karen Clark (Karen Clark & Company—KCC)*
6. Hear Update Regarding Federal Emergency Management Agency (FEMA)/Superstorm Sandy Lawsuits—*Amy Bach (United Policyholders)*
7. Discuss Any Other Matters Brought Before the Working Group—*Commissioner Kevin M. McCarty (FL)*
8. Adjournment

Consider Adoption of Nov. 17 Minutes

Draft: 12/3/14

Catastrophe Insurance (C) Working Group
Washington, District of Columbia
November 17, 2014

The Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met in Washington, DC, Nov. 17, 2014. The following Working Group members participated: Kevin M. McCarty, Chair represented by David Altmaier, (FL); Charles Angell (AL); Giovanni Muzzarelli (CA); George Bradner and Susan Gozzo Andrews (CT); Martha Im (HI); Martin Hazen (KS); Warren Byrd and Richard Piazza (LA); Kevin Beagan (MA); Sandra Castagna (MD); Angela Nelson (MO); David Browning (MS); Kristine Maurer (NJ); Cuc Nguyen and Brian Gabbert (OK); Paula Pallozzi (RI); Kendall Buchanan (SC); Michael Humphreys (TN); and Rebecca Nichols (VA).

1. Adopted its Aug. 17 Minutes

Mr. Byrd made a motion, seconded by Mr. Hazen, to adopt the Working Group's Aug. 17 minutes (*see NAIC Proceedings – Summer 2014, Attachment Five, Property and Casualty Insurance (C) Committee Aug. 18, 2014, minutes*). The motion passed.

2. Discussed Forming a Subgroup to address the Working Group's Charges Regarding Consumer Education

Mr. Altmaier said that near the end of 2012, a public hearing was held regarding catastrophe insurance. He said a summary of that hearing can be found in the meeting handout. Mr. Altmaier said the Working Group has been charged with reviewing the findings of the public hearing and considering developing best practices to reduce post-disaster recovery obstacles for insurance consumers. He suggested that the Working Group form a subgroup to review the results of the public hearing and to make recommendations regarding best practices. Mr. Altmaier said since there were no objections to forming this subgroup, he would ask for a motion to form a subgroup, which will be chaired by Ms. Nelson, to review the findings of the public hearing and make recommendations to the Working Group regarding best practices. Ms. Pallozzi made the motion, seconded by Ms. Nguyen. The motion carried. The members of the Working Group that volunteered to serve on the subgroup are: Mr. Angell; Mr. Bradner; Mr. Hazen; Mr. Byrd; and Ms. Pallozzi. Mr. Altmaier asked interested parties to monitor the subgroup to provide their input. The subgroup will be named at a later date.

3. Heard a Presentation Regarding Catastrophe Bonds

Steve Cheneko, John Lebens and Rajiv Thomas (Nationwide Insurance) made a presentation regarding the implications of the life insurer treatment of catastrophe bonds and the implications this treatment could have on the P/C industry.

Mr. Lebens said Nationwide said the topic of catastrophe bonds and how they are pursued, or not pursued, on a life insurance company's balance sheets is an important topic and an opportunity for the industry to capitalize on some potential diversification benefits that exist between the P/C and the life insurance sides of business. He said that on the P/C side of business, one of the largest risks is catastrophe risk. Mr. Lebens said life insurers, on the other hand, have a great deal of credit risk. He said currently life insurers do not participate to a great degree in the catastrophe bond market. Mr. Leben said the underlying risk between catastrophe risk and credit risk are generally uncorrelated. He said one would think catastrophe bonds would be an attractive investment option for a life insurer.

Mr. Leben said Nationwide believed a substantial reason as to why life insurers do not participate in the catastrophe bond market is due to the capital treatment a life insurer receives if they did purchase a catastrophe bond. He said if a life insurer purchases a catastrophe bond today, the catastrophe bond is treated like any other corporate credit. Mr. Leben said Nationwide believes a more appropriate treatment would be to reflect the fact that the underlying risk is different. He said the underlying risk is triggered by catastrophe risk, which by definition is not related to macroeconomic risk. Mr. Leben said that Nationwide thinks that the current risk charge does not properly reflect this, which causes life insurers not to invest heavily in this space.

Mr. Leban said they believe that if life insurers did invest in this space, there would be several benefits. He said first of all, P/C insurers would see a larger investment base in the catastrophe bond space, which would provide more capacity and ultimately a lower cost of capital. Mr. Leban said the benefit to the life insurers would be that they would be getting a similar return in terms of asset return on an uncorrelated asset base. He said their risk-adjusted return is improved. Mr. Leban said regulators would benefit by bringing greater diversification into the system. He said ultimately, the benefit is seen by the consumer, as the consumer would benefit from the fact that the P/C capital costs would decline if there were a larger base of catastrophe risk transfer available. Mr. Leban said that life insurance customers would also benefit because life insurance companies would have higher risk adjusted returns than they would have otherwise. He said this is the basic premise of the white paper written by Nationwide that is included in the materials.

Mr. Leban used the example of a company called Cat Re, which illustrates a special purpose vehicle set up by an insurance company. He said its sole purpose is to provide reinsurance protection to the insurance company. Mr. Leban said the way that the special purpose vehicle gets its capital is by issuing bonds to the capital markets. He said the bonds are issued, and the funds are held in a reinsurance trust invested in highly. Mr. Leban said risk-linked securities issued by insurance companies are designed to protect an insurance company from large losses incurred in the event of a major catastrophe. He said its sole purpose is to provide reinsurance protection to the insurance company. Mr. Leban said the way that a reinsurer gets its capital is by issuing bonds to the capital markets. He said the bonds are issued, and the funds are held in a reinsurance trust invested in highly liquid cash-like investments, so there is little to no credit risk.

Mr. Leban said the insurer pays premium to the special purpose vehicle for an agreement that if a certain catastrophe event occurs, the proceeds that are in the trust will go to the insurance company. He said the premiums that are paid in flow to the investors along with the interest payment on the funds. Mr. Leban said in this transaction, there is little credit risk. He said the only credit risk is whether the insurance company makes its premium payments to the reinsurance special purpose vehicle. Mr. Leban said the underlying risk is simply catastrophe risk.

Mr. Cheneko said catastrophe bonds are largely uncorrelated with broader macroeconomic risks and macroeconomic credit risks. He said this was seen during the financial crisis in 2008, when catastrophe bonds had positive total returns and most other investments did not. Mr. Cheneko said certainly bonds with similar ratings to catastrophe bonds did not have positive returns during that period. He said when you think about the traditional sources of credit risk—cession, the overall economy, companies being over-leveraged, companies being mismanaged and obsolescence in company business models—none of these things are applicable to catastrophe risk.

Mr. Cheneko said with the way catastrophe bonds are currently structured, where the principal is generally protected through a trust in high-quality assets such as money market assets or U.S. Treasury assets, then again only the premium from the ceding insurance company, which accounts for most of the interest payment on the catastrophe bonds, is what is at risk and typical bonds are not at risk. He said they have data that shows there is a low correlation between catastrophe bonds and equities and other types of corporate bonds.

Mr. Cheneko said a down economy is not going to cause a natural catastrophe. He said natural disasters can have economic impacts, but those impacts would tend to be limited in geographical scope, and many other types of credit risk in a corporate bond exposure are not geographically sensitive to any one specific area.

Mr. Cheneko said life insurers are not significant investors today. He said 81% of catastrophe bonds are owned by investors. He said through their conversations with life insurance companies, they think this is because of the capital charge for these bonds, which is high relative to the risk. He said catastrophe bonds receive the same treatment today as similarly rated investment grade bonds or unrated bonds for those catastrophe bonds that are unrated. Mr. Cheneko said in neither of these cases is the correlation benefit that we have been discussing been picked up. He said if the catastrophe bonds are unrated, they are categorized as NAIC 6, and the bonds are marked to market under statutory accounting, driving capital volatility. Mr. Cheneko said they believe that there would be a widespread benefit in the overall industry if catastrophe bonds were treated properly, and life insurers found it more advantageous to invest in these bonds. He said it would increase the market for P/C companies where they could see an insurance risk too, which would make that more efficient and reduce the cost of ceding that risk. Mr. Cheneko said for life companies, it would provide strength through diversifying their investment portfolios, which are heavily concentrated in traditional credit risk today, leading to the strength to build P/C and life companies and eventually passing those benefits to the consumer in terms of lower cost.

Mr. Thomas said that the treatment of the risk-based capital (RBC) is the same for a corporate bond as it is for a catastrophe bond. He said there is no differentiation in the current dollar treatment of a catastrophe bond, particularly if the catastrophe bond is assessed a capital charge that is close to the C-1 or the asset risk component. Mr. Thomas said, for example, if a life insurance company bought \$500 million of a BB-rated catastrophe bond, it would result in a capital charge of about 3.4%, or a \$17 million capital charge, that would be added to the C1 or asset risk component. He said the RBC calculation results in an increase of \$16.9 million. Mr. Thomas said this demonstrates that the current capital treatment does not provide any differences in terms of the fact that a catastrophe bond is really more of an insurance risk, as well as the fact that it provides some diversification benefit as opposed to a corporate bond.

Mr. Thomas said an example of an alternate RBC treatment would modify the capital treatment in the RBC calculation. He said the alternate method attempts to recognize the insurance features of a catastrophe bond, as well as the diversification benefit to life insurance companies. He said that in this example, the capital charge is placed under C2, the insurance risk component, as it recognizes that the underlying contract behind a catastrophe bond is an insurance contract because its valuation is primarily determined by weather events. This is unlike a typical corporate bond, which is affected by financial credit risk and market risk. He said this alternative treatment would result in the overall capital charge reducing from \$16.9 million to \$2.4 million for a \$500 million bond.

Mr. Leban said to recap, the basic premise of insurance is risk diversification. He said they think there is a largely untapped potential for risk diversification between catastrophe risk and credit risk. Mr. Leban said they think it is untapped today because of the capital treatment that catastrophe bonds receive on life insurance balance sheets. He said they gave an illustration of one alternative and while it is not bullet-proof by any stretch, they do believe in the underlying premise that the current treatment is not appropriate given the diversification. Mr. Leban said they believe they could find a more appropriate treatment to attract life insurance companies to this space. He said the benefits go across the whole continuum of constituents in the insurance chain. Mr. Leban said casualty/C insurers benefit, life insurers' benefit, ultimately the consumers of both of those products benefit, and the regulators will benefit from the solvency perspective by having more diverse portfolios.

Mr. Altmaier asked Mr. Leban if he had had any conversations with or given any presentations to either the Financial Condition (E) Committee, the Capital Adequacy (E) Task Force or the Life Risk Based Capital (E) Working Group. Mr. Leban said the Catastrophe Insurance (C) Working Group was the first place this presentation had been given. He said the concept in the white paper that was handed out that was endorsed by the North American Chief Risk Officers Council. Mr. Altmaier suggested that the technical expertise to consider a proposal like this would exist in the groups he mentioned. He said this was of interest to this Working Group because it would have an effect on the P/C catastrophe marketplace, but he said he thinks that if this is a project that Nationwide would like to see implemented, they should meet with the Financial Condition (E) Committee working groups.

Mr. Muzzarelli said he had a question on the asset and liability matching part of this proposal. He said these catastrophe bonds are rated BB for a reason as there is an expected loss with a certain return period, and he would imagine that this correlates to some equivalent credit event with typical corporate bonds. Mr. Muzzarelli asked if Nationwide had some thoughts regarding that impact and whether there really is going to be no change on the asset liability matching part of a life insurer's portfolio. Mr. Leban said when they talked to some people at life insurance companies, he thought they saw this as an overall way to reduce the credit risk in their portfolios, so they are really more focused on more traditional interest rate asset liability interest matching. He said in terms of the timing, these bonds in the past have tended to be a little shorter than life insurance companies typically buy, but it depends on the portfolio and the product. From a credit perspective, he thinks they see this not just diversifies but reduces the overall credit risk.

Mr. Altmaier said Mr. Leban indicated that right now about 1% of the catastrophe bond market may be attributable to the life insurance marketplace. He asked Mr. Leban if he had an appreciation of how much that might increase if changes of this nature were implemented. Mr. Leban said he did not know that they were able to quantify that, but they do think that even a modest improvement from the life insurance industry could have a big impact on the catastrophe bond market. He said the size of life insurance portfolios relative to the size of the catastrophe bond market is large, so even if that was increased by just a few percent of the industry, it could still have a sizable impact.

Mr. Altmaier said there are different kinds of loss triggers on particular catastrophe bonds that can basically be lumped into two buckets—indemnity-based loss triggers and index-based loss triggers—and he was unsure if life insurers in particular had an appetite for one of those types of loss triggers versus the other or if they were agnostic to the trigger. Mr. Leban said his guess is that they would be agnostic. He said the underlying trigger in both cases, whether it is indemnity-based—it is actually triggered by the actual losses in the insurance company’s portfolio relative to an index, which means it is triggered based on the accumulation of industry losses—the underlying event is still a large natural catastrophe. Mr. Leban said again there is no correlation with the larger macroeconomic issue, so he cannot speak for those companies, but he believes they would be agnostic.

4. Received an update from the Post-Catastrophe Regulatory Guidance (C) Subgroup

Ms. Pallozzi said the Subgroup met via conference call Oct. 3 to discuss its charges and how the Subgroup would proceed.

Ms. Pallozzi said the Subgroup’s discussion began with the work that was done by the Northeast Zone, as it had collected best practices prior to Superstorm Sandy. She said the Subgroup is creating a survey based on the survey that went out the Northeast Zone states to collect best practices from all states. Ms. Pallozzi said the Subgroup was charged with developing best practices to inform industry what the departments of insurance expect in the event of a catastrophe prior to a catastrophic event. She said she was working with NAIC staff to assemble the survey, and the survey will go out to the states within the next few weeks.

Ms. Pallozzi mentioned that the Catastrophe Response (C) Working Group would be meeting Nov. 18. She said there is some confusion regarding the difference between that Working Group and the Post-Catastrophe Regulatory Guidance (C) Subgroup. She said the role of the Subgroup is to discuss the best practices for state departments of insurance to use when issuing directives to industry, as well as let industry know what a state department of insurance (DOI) expects of industry. Ms. Pallozzi said the Catastrophe Response (C) Working Group is looking at the resources needed by the state departments of insurance following a catastrophe. She said an example of these needs would be help manning phone lines, possibly by NAIC staff and neighboring states, for a DOI so that the departments’ personnel are able to get out into the field.

The Working Group will receive an update from Anthony Cotto (NAIC) regarding the National Flood Insurance Program (NFIP) and catastrophe-related legislation at a later date, as he was unable to attend the meeting.

Having no further business, the Catastrophe Insurance (C) Working Group adjourned.

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Receive an Oral Report Regarding the
Activities of the Post-Catastrophe
Regulatory Guidance (C) Subgroup and
Consider Adoption of its Feb. 17 Minutes

Draft: 3/6/15

Post-Catastrophe Regulatory Guidance (C) Subgroup
Conference Call
Feb. 17, 2015

The Post-Catastrophe Regulatory Guidance (C) Subgroup of the Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call Feb. 17, 2015. The following Working Group members participated: Paula M. Pallozzi, Chair (RI); Charles Angell (AL); George Bradner (CT); Sandra Starnes (FL); Colin Hayashida (HI); Richard Piazza (LA); Joy Hatchette (MD); Joan Dutil (MO); Carl Sornson (NJ); Brian Gabbert and Cuc Nguyen (OK); and Brian Hoffmeister and Michael Humphreys (TN). Also participating were: David Browning (MS) and Evelyn Padilla (NM).

1. Discussed the Catastrophe Survey

Ms. Pallozzi reviewed the Subgroup's charges regarding the need to provide added certainty for insurers and regulators in the advance of a major disaster. She said the intent of the survey is to collect information that will allow the Subgroup to compose a best practices document to address these concerns. Ms. Pallozzi said the survey would also provide information to the Catastrophe Response (C) Working Group with the information needed to update the NAIC *State Disaster Response Plan*, as well as the Consumer Outreach and Assistance Post-Disaster (C) Subgroup so that multiple surveys would not be sent to the states.

Ms. Pallozzi said the survey consists of the following sections: hurricane deductibles; wind/hail deductibles; earthquakes; tornados; mitigation; state insurance departments' catastrophe processes; residual market mechanisms; catastrophe underwriting information; and general information.

Mr. Sornson suggested that the survey be more specific regarding whether the questions were regarding commercial lines or personal lines of insurance. Ms. Pallozzi and NAIC staff will review the survey and add information in the header to convey that the survey pertains to both commercial lines and personal lines of insurance.

Ms. Pallozzi said California was unable to be on the conference call and sent the following comments, "California would prefer not to include all questions about the state's underwriting guidelines and rating plans with respect to underwriting against or charging for prior claims or inquiries or catastrophe claims. Our statutes in this regard are rather broad and their application frequently depends on the details of the underwriting or rating plan. It would be difficult to answer yes or no to many of the related questions. However, we understand the Subgroup may want to retain these questions if the members believe it would be to their benefit to know the statutes that are available in other states to address these circumstances."

Ms. Pallozzi said the purpose of the survey is to gather current statutes, and the Subgroup may want to consider adding something to the questions that asked for comments from the state if the answer to a question is not strictly "yes" or "no." She asked if regulators were able to edit their responses once they have submitted the form. Sara Robben (NAIC) said once the form was submitted, any changes or updates would need to be submitted to her to make the change. Ms. Pallozzi said this would need to be added to the submission message so regulators would know where to send changes if necessary.

Mr. Bradner asked whom the survey would be sent to. Ms. Robben said the survey would go to the catastrophe contacts in each state; however, the states that did not have contact information were sent an email to determine the appropriate contact.

Mr. Angell said it would be beneficial to see how other states answered the survey and asked how the results of the survey would be distributed to the Subgroup. Ms. Hatchette suggested looking at the results distributed for the Auto Insurance (C/D) Study Group as a template as a summary guideline. The Subgroup agreed it wants to be able to separate results by states.

Ms. Pallozzi will work with NAIC staff to change the survey based upon the comments received. She said the survey would be distributed with a request to complete within two weeks, with a final deadline of three weeks. She hopes to have initial survey results before the Spring National meeting to present to the Catastrophe Insurance (C) Working Group.

Having no further business, the Post-Catastrophe Regulatory Guidance (C) Subgroup adjourned.

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Receive an Oral Report Regarding the
Activities of the Consumer Outreach and
Assistance Post-Disaster (C) Subgroup and
Consider Adoption of its March 16 Minutes

Consumer Outreach and Assistance Post-Disaster (C) Subgroup
Conference Call
March 16, 2015

The Consumer Outreach and Assistance Post-Disaster (C) Subgroup of the Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call Feb. 17, 2015. The following Working Group members participated: Angela Nelson, Chair (MO); Charles Angell (AL); George Bradner (CT); Martin Hazen (KS); Ron Henderson (LA); Joy Hatchette (MD); Cuc Nguyen (OK); and Beth Vollucci (RI). Also participating were: David Altmaier (FL); Robert Rapp (IL); Steven Belec (MA); Jason McCartney, Mickey Scheidt and Connie Van Slyke (NE); Tom Botsko (OH); Tracie Weeder (OR); Michael Humphreys (TN); Iris Saenz (TX); and Nancy Olsen (WY).

1. Discussed a Work Plan for the Subgroup

Ms. Nelson reviewed the Subgroup's charges. Mr. Bradner said that many of the charges referred to coverage issues, which tend to be statutorily driven in most states. Ms. Nelson said the Post-Catastrophe Regulatory Guidance (C) Subgroup has sent a survey to the states that includes some information that will be useful to the Subgroup.

Mr. Bradner said it is important to set clear expectations for people to understand what is going to happen after a catastrophe occurs. Ms. Nelson said there are consumer approaches that could be taken directly following a disaster, such as compiling some "canned" communications to departments of insurance to distribute to the consumer, as some disasters occur with no warning. In addition, she said the Subgroup might consider creating a guide to aid the consumer understanding of the post-disaster process. Mr. Bradner said the guide should not only provide information regarding organizations such as the National Flood Insurance Program (NFIP) and the Federal Emergency Management Agency (FEMA), but also information regarding various faith-based organizations that are there to help in the aftermath of a catastrophic event.

Ms. Stewart asked if the NAIC had any information currently available that addresses pre-disaster mitigation, as Wyoming is interested in providing mitigation information to its consumers. Mr. Bradner said that the Insurance Institute for Business & Home Safety (IBHS) has a lot of helpful mitigation materials that she may want to investigate.

Sonya Larkin-Thorne (Consumer Representative) said one of the critical issues the consumer faces after a disaster is that he or she does not know what to do. She said an interactive brochure available at a department of insurance's (DOI) website that walks the consumer through a process would be beneficial. Ms. Nelson said this would lend itself well to DOIs too, as this information can be provided to the consumer directly following a catastrophic event. Mr. Rapp said Illinois has this type of information on its website. Ms. Nelson asked him to send a link to the Illinois document to Sara Robben (NAIC). Ms. Hatchette said Maryland has a property damage claim and a weather-related brochure that she will also forward to Ms. Robben.

Mr. Angell asked if the Subgroup had knowledge of how the industry currently deals with the following charges: the appropriate duration for payment of additional living expenses; and the appropriate duration for consumers to recover the full replacement cost of personal and real property, or if the Subgroup needed to send out surveys to develop a benchmark. The Subgroup agreed that surveys regarding a company's claims payment practices with regard to catastrophic losses would be the best way to collect this type of information. Mr. Angell suggested asking questions regarding how much additional living expense a company advances during a specific time period and if companies waive the actual cash value (ACV) rule and use replacement cost in the event of a total loss.

The Subgroup will create a survey to send out to various insurance carriers to obtain information regarding the way claims are handled in the event of a catastrophic loss. Additionally, the Subgroup will work on creating post-catastrophe brochures to be used by DOIs to provide to consumers following a catastrophic event. Mr. Bradner said that the IBHS has helpful pre- and post-mitigation materials. Mr. Angell said the Subgroup needs to work to try to get these materials out to the consumer. He said that in Alabama, they have encouraged companies to send IBHS brochures out with their adjusters to provide to the consumer. Mr. Angell said Alabama has a continuing education (CE) requirement that requires all CE providers to teach a 30-minute segment on the IBHS mitigation and discounts that are available in the state. He said this is required in the pre-licensing courses too, as well as putting questions regarding mitigation on the licensing exams. Ms. Larkin-Thorne said providing a link to the IBHS website to the building departments in various towns would be of tremendous help to consumers who are replacing their roofs.

Ms. Robben is to share a list of links that will be provided by Maryland and Illinois, as well as a copy of the 2012 public hearing summary. Mr. Hazen suggested the NAIC create an application that consumers can use following a catastrophic event. Mr. Bradner suggested some of this information might be easily added to the NAIC home inventory application. Ms. Nelson suggested an insurance information application would be beneficial. Ms. Hatchette suggested health and life insurance information to be added to an application if this is developed. Mr. Bradner suggested looking to see if there were already applications available that could be used. The Subgroup will investigate this possibility too.

Having no further business, the Post-Catastrophe Regulatory Guidance (C) Subgroup adjourned.

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Receive Update Regarding National Flood Insurance Program (NFIP) and Catastrophe Legislation

Hear Presentation Regarding the RiskInsight U.S. Storm Surge Model

Hear Update Regarding Federal Emergency Management Agency (FEMA) and Superstorm Sandy Lawsuits



**National Association of Insurance
Commissioners
Property and Casualty
Catastrophe Insurance Working Group**

Superstorm Sandy Litigation Update

Amy Bach, Esq., Executive Director
Email: amy.bach@uphelp.org
Website: www.uphelp.org

March 29, 2015
Phoenix, AZ

United Policyholders
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About United Policyholders

- A 501(c)(3), trusted information resource and respected voice for insurance consumers in all 50 states.
- Funded by donations and grants. No insurer funding.
- Contributing to the NAIC's work since 2007
- 23 years of experience helping homeowners, renters, and businesses repair, rebuild and recover after natural disasters and coordinating with long term recovery partners (e.g., Red Cross, United Way, public officials)
- Staff and volunteer corps with personal and/or professional expertise in disaster recovery, insurance sales, claims and dispute resolution.

Our Three Programs

- **Roadmap to Recovery™**
– Helping individuals and businesses solve insurance problems that can arise after disasters.
- **Roadmap to Preparedness**
– Increasing insurance literacy and personal financial strength.
- **Advocacy and Action**
– A voice for insurance consumers in courts of law, the media and legislative and other public policy forums.

National Flood Insurance Program Superstorm Sandy, Oct. 2012

- Impacted 24 states, @ \$50 billion in damages
- 144,000 claims filed
- 128,000 paid losses
- Total payouts \$7,870,157,475
- Average payout \$61,089
- Average Sandy loss @ \$
- Extended the proof of loss deadline but did not relax loss documentation requirements
- Named in 1,000 + lawsuits
- Has been the subject of extensive media coverage

Sandy update: Homeowners battle insurance adjusters

Updated April 26, 2013 9:00 PM
By JOE RYAN joe.ryan@newsday.com

12 Reprints A+ A-



Thomas Peilly and his wife, top, with their daughter Alex, 2, remove the remaining items left at the site where their house once stood. (April 18, 2013) Photo Credit: Johnny Milano

They have argued themselves blue with insurance adjusters. And still their homes are gutted and smell of sodden wood.

Six months after superstorm Sandy, a weary cadre of Long Islanders remains mired in fights over settlements from the National Flood Insurance Program. They tell of arduous hours

Dark Water: A Year After Hurricane Sandy

OCT. 2, 2013

HOME & GARDEN 64 COMMENTS

Domestic Lives
By SANDY KENNAK

LONG BEACH, N.Y. — In lines at the grocery store and the post office here, the usual pleasantries are still squeezed out by talk of the slow pace of reconstruction, spiking flood insurance premiums and whether the hospital, movie theater or sports club will ever reopen. Nearly a year after Sandy, you hear the same refrain everywhere: "Hey, how are you doing? Are you guys back home yet?" About a quarter, possibly more, are not.

Our own extensive renovations were finished months ago, but I have yet to hang pictures on the walls or put rescued books and photo albums onto their new shelves.

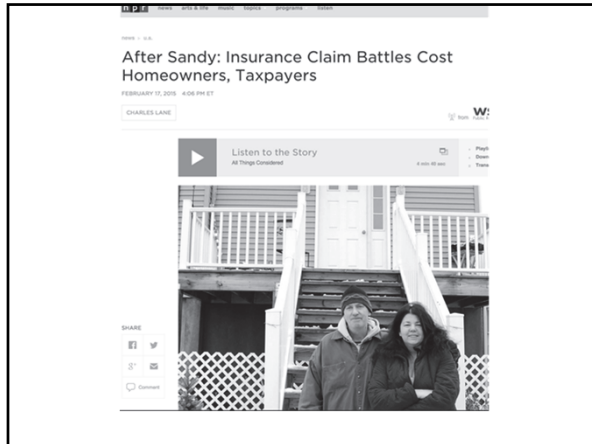
Mine is a wary ambivalence. And I'm not alone.

"There's a reason the women in this town have



A gutted house near the bay waits for a new flood-resistant foundation — and a face-lift.
Tony Gonzalez/The New York Times

TRUE STORY
APRIL 17, 2013



The National Flood Insurance Program

- Created by Congress, now part of FEMA which is part of Homeland Security
- Majority of claims are privately administered by WYO insurers
- WYOs hire independent adjusters to adjust claims
- FEMA handles appeals but outsources defense of litigation

The program's challenges:

- Hiring/deploying managing adjusters after a large scale cat, pressure to expedite
- Red ink, political football
- Single adjuster program, payouts criticized post Katrina (Audits, Inspector General, GAO reports)
- Overpayment (no underpayment) penalties

Consumer perspectives

- Big gaps between damage and payouts
- Hard to comply with strict POL requirements
- Xactimate/computer generated settlement offers out of sync w/contractor estimates
- Earth movement exclusion unfairly used to deny claims
- Hard to find/afford experts/structural engineers

Early developments:

- NFIP extends POL deadlines several times
- Pressure from survivors on elected officials
- Payouts fall far short of amounts needed to repair/rebuild
- Earth movement denials disputed

The cost of the battles

“According to Kelly's complaint, the scheme starts with the lowball estimate. The Stapleton's had to completely rebuild their house for \$220,000. But the insurance company only offered them \$98,000 because it says the foundation was damaged before Sandy. Kelly says the lower claim was designed to incite litigation.

According to Long Island attorney
Dennis Kelly:

"And then, once in litigation insurance lawyers have a broad menu of tactics to "drag out" the case for years. So far, insurance lawyers have questioned electronic signatures, demanded on-site inspections, and subpoenaed numerous government employees".

In court documents, lawyers for insurance companies estimate that legal fees could top \$100 million. Federal Magistrate Gary Brown called that number a "really, really big problem" because that would be far more than the disputed amount.

"They wanted to take the deposition of one contractor who issued a paid receipt for \$500," Kelly says. "How much does that whole process cost relative to what it is they're claiming? Are we going to have more than \$55,000 worth of legal fees here to address a \$55,000 claim?"

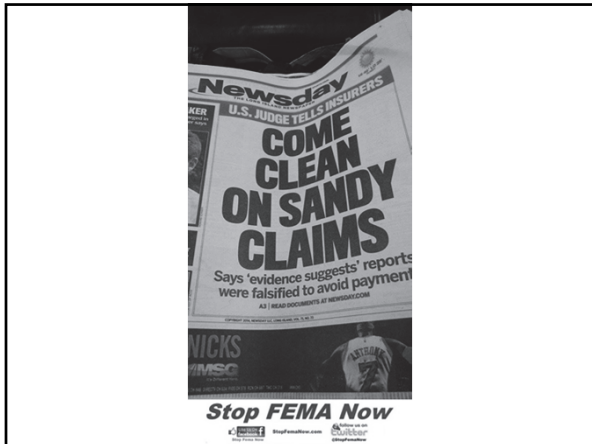
Suits filed then consolidated

- New York
 - *In Re Hurricane Sandy Cases*
(Case No. 14mc41)
- New Jersey
 - *In Re Hurricane Sandy Cases*
(Case No. 1:15-mc-700)
 - Stayed pending FEMA reopen

The bombshell

- Whistleblower engineer on 60 Minutes
“175 of my reports were altered. The only ones that weren’t altered were the ones where I found no damage...” Aired 3/15





**Raimey v. Wright Flood Ins. Co.
RICO suit**

- On November 7, 2014, Magistrate Gary R. Brown issued a Memorandum and Order finding that Wright Flood Ins. Co. altered reports from the engineering firm U.S. Forensics retained to investigate Superstorm Sandy damage at plaintiff's home
- Court ordered discovery revealed that reports had been rewritten to say that damage had not been caused by Superstorm Sandy

Investigations and Reopens

- In December 2014, FEMA launches its own investigation into altered engineering reports
- FEMA under new leadership now agreeing to open up to 144,000 NFIP Sandy claims
- New York Attorney General has launched a criminal probe; U.S. Senators involved

Settlement Discussions

- Lawyers for NFIP plaintiffs are in negotiations with FEMA re: expedited settlement of RICO and individual cases
- More than 1,000 pending cases and many in mediation
- Settlement negotiations may or may not include reforms to the NFIP appeal process and class action releases

New lawsuit:

- Mooney v. Selective (D. of N.J., Case No. 2:15-cv-01865, Filed March 13, 2015)
 - Sales tax improperly withheld
 - Xactimate abuses

FEMA's Proposed Reforms

- "Overhauling the claims and appeals process;
- Aligning management of litigation in a way that puts the flood survivor first; and
- Improving the customer experience throughout the entire claims process.
- The agency also requested the assistance of the DHS Office of Inspector General to review and make recommendations on FEMA's flood insurance oversight role."

FEMA Data Call

- In a memo dated March 16, 2015, FEMA requested that all WYOs and the NFIP Direct Servicing Agent provide complete claim information for all Sandy claims to FEMA by March 20, 2015, including the property location, date of loss, amount paid from contents or dwelling limits, excluded damages, and the name of the engineering firms or brokerages used to adjust claims

The Appeal Process

- 44 C.F.R. §62.20 mandates an appeal process for NFIP policyholders to challenge adverse claim determinations
- More than 2,647 appeals have been filed since Superstorm Sandy
- The NFIP has not provided data on the number of appeals resulting in reinspections or reversals

The Appeal Process (cont.)

- Legal services groups in New York and New Jersey have helped file a number of the appeals and cite an @8% reversal rate
- UP initiated an enforcement proceeding to compel responses to our FOIA requests. UP v. FEMA, USDC Case 1:15-cv-00282

The Source of Issues?

- FEMA is under-resourced and under intense scrutiny from Congress and the public
- Public-private partnerships are inherently problematic and difficult to administer
- WYOs have incentives to underpay and deny claims after Katrina overpayments (risk of audit and penalties under the Financial Control Plan - 44 CFR Part 62, Appendix B)

Looking ahead...

- FEMA must implement a meaningful claims appeal process that gives NFIP policyholders confidence in the system
- FEMA must implement an alternative dispute resolution process that is cost-effective, fair, and objective (see, e.g., UP's 2013 Report: Best Practices for Post-Disaster Mediation Programs)

Open questions:

- Will settlement talks result in dismissals of class action suits?
- Will NFIP reforms be implemented?
 - WYO oversight
 - Claim protocols/POL requirements
 - Appeal process
- Will the NFIP survive?

For More Information About UP:

- Visit UP's website and search for more buying tips, claim tips, articles, copies of *amicus curiae* briefs and helpful info at: www.uphelp.org



Any Other Matters Brought Before the Working Group

