



**Comments re: Proposed Insurance Regulation 110 –  
Property Insurance and Weather Related Claims, Section 11 – Mediation Program**

Before the State of Rhode Island and Providence Plantations  
Department of Business Regulation, Division of Insurance  
July 8, 2013

**Introduction**

United Policyholders (“UP”) is a non-profit 501(c) (3) organization whose mission is to be an information resource and voice for consumers of all types of insurance. Its programs include Roadmap to Preparedness, which promotes disaster preparedness and insurance literacy, and Roadmap to Recovery™, which provides consumers with tools and resources for solving insurance problems after natural catastrophes and other adverse events.

The UP Library contains publications that educate consumers on effectively using mediation to resolve insurance claim disputes and avoid the time and expense of a formal appraisal or lawsuit. They include our “Policyholders Guide to Mediation” in English and Spanish, and a report titled “Best Practices for Post-Disaster Insurance Claim Mediation Programs,” (hereinafter referred to as “The Report”, a copy of which is attached and available online at [www.uphelp.org](http://www.uphelp.org)).

The report originated from research directed by Jay M. Feinman, Distinguished Professor of Law at Rutgers School of Law, Camden, New Jersey, and UP Executive Director Amy Bach, Esq. In 2012 United Policyholders disseminated the report to insurance regulators throughout the U.S., including the Rhode Island Division of Insurance. This statement was prepared by Professor Feinman, who teaches insurance law, writes scholarly and general works on insurance and insurance law and serves as an advisor to UP:

**Comments**

Proposed Regulation 110, Section 11, authorizes the Department of Business Regulation to establish a program for mediation of personal lines, residential property insurance disputes following a hurricane. This step is highly desirable in preparing to serve the needs of Rhode Island insurance consumers.

In 1992, Hurricane Andrew struck Florida, prompting the creation of a program in that state to mediate claims. Since then a number of other states have followed suit after catastrophes. Most recently, several northeastern states established mediation programs to address disputes arising from Superstorm Sandy. Most of these programs have been after-the-fact. In this Proposed Regulation, the Department is taking the laudable step of establishing in advance the structure of a program that it may implement swiftly following a catastrophe.

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The Proposed Regulation appropriately makes the mediation program optional for policyholders and mandatory for insurers within its scope. It establishes fair and reasonable procedures for selecting mediators, requesting mediation, and conducting the mediation conference. Among its many strengths, for example, it requires that the insurer's representative be knowledgeable and have full authority to settle a claim, and it gives the policyholder a three-day right of rescission following a successful mediation.

We respectfully submit the following suggestions for strengthening the Proposed Regulations:

### **Section 11.B.2(a)**

2. "Claim" means a dispute between an insurer and the policyholder(s) of a personal lines insurance policy arising out of damage to residential property caused by a hurricane and relating to a material issue of fact, except for a dispute with respect to:

(a) coverage under the insurance policy;

This section should be revised to make clear that although disputes about the *existence of coverage* are excluded from the mediation program, disputes about the *cause of damage* are subject to mediation; this appears to be the intent of the section, but clarification would be desirable.

A frequent issue arising under homeowners policies after hurricanes is the extent to which a loss was caused by wind, which would be covered under a homeowner's policy, or by water, which might not be covered. The resolution of these issues depends on proof from the homeowner, adjuster, experts, and others as to the cause and scope of the loss and is entirely appropriate for mediation. Otherwise, many claims that arise from weather-related events will be excluded from the mediation program and the program will be substantially less effective.

### **Section 11.F.4**

4. The representative of the insurer attending the mediation conference shall bring a copy of the policy and the entire claims file to the conference.

This section should be revised to state that the insurer is required to provide the policyholder with a copy of the entire claims file prior to the mediation.

### **Section 11.F.5**

5. The parties may be represented by counsel or public adjusters at the mediation conference provided that five (5) days' notice of the representation is provided to the opposing party and the Administrator or assigned mediator.

In addition to the right to be represented at the mediation conference, policyholders would benefit from a mechanism for providing education and advice to them prior to the mediation conference. This mechanism might include written and web-based educational materials, group educational sessions, and individual counseling by Division staff, representatives of consumer organizations, or volunteer attorneys, public adjusters, law students, and others. The Proposed Regulation would be strengthened by requiring some such mechanism.

### **New Section 11.I.**

A new section should be added to mandate a process of evaluation for the mediation program. This process should collect and report data after completion of the mediations, including claim amounts, disputed amounts, individual settlement offers, length of the mediations, outcomes of the mediations, and satisfaction of the parties. Collecting, analyzing, and reporting such data will enable policymakers and the public to evaluate the success of the program and provide a basis for improvements. A sample of an evaluation form is included in the appendix to the attached UP Mediation Report.

### **Conclusion**

We appreciate the opportunity to provide input to the Division in this matter. Particularly after disasters, consumers need access to fair; accessible, inexpensive and efficient dispute resolution options that will allow them to maintain forward momentum on the road to recovery.

Respectfully submitted by Prof. Jay Feinman, Rutgers University School of Law on behalf of United Policyholders, a non-profit insurance consumer organization.