

Host of factors contributed to Hurricane Sandy claims fallout

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The lawsuit and judge's remarks made the headlines, but a deeper investigation into the issues involved in many Hurricane Sandy claims finds that while there may have been underpaid claims, a host of factors contributed to the underpayments.

"Many homes were damaged by Sandy and inspected by engineers. There were some homes that should have been inspected but weren't," said Amy Bach, executive director of United Policyholders, a California-based non-profit that provides insurance information and serves as a voice for consumers in the U.S. "Most independent adjusters (IAs) were told to try and adjust the losses themselves. There have been a larger number of claims where the full extent of the Sandy damages were not assessed by engineers."

Large number of incomplete reports

She says that the number of false engineering reports is fairly small. "The number of incomplete reports is larger. The problem is that those overlooked certain elements — either the engineers didn't provide an opinion because they weren't asked to check those things or they missed them. Plus it is also hard to assess pre-existing damage. The quantum of truth of what was caused by a given event is a challenge — especially where things have been washed away. There will be challenges to figure out what was there before the event."

Bach says another issue involved the experience of the adjusters working the losses. "Most independent adjusters operated under the principles that all adjusters work under — get in, get out, close the file, move on. There was a lot of pressure to get an adjuster out as soon as possible to a loss. There were limitations with the adjusting force. A lot of guys got out there and focused on making a payment to the homeowner."

She adds that some were experienced catastrophe adjusters and others were new to the process. This lack of experience meant that while adjusters were certified for the program, they may not have had the practical skills needed to handle these types of losses.

“There are a number of pressures on independent adjusters to under-report and it’s not nefarious. They have a lot of empathy and want to help the homeowners. It’s just that empathy gets outweighed by the rules of the program and the way the IAs get paid.”

Challenges of the area worked against everyone

Dave Charles, a public adjuster and president of Master Claims in New Jersey, says that every adjuster knows where their bread is buttered. “It’s the same behavior that occurs on every storm. This was the first time they’ve hung the engineers out to dry. The engineers know they’ll keep getting paid if they deliver the goods. The only reports altered were the ones from the honest guys. The rest were already written by engineers who knew what the insurers wanted.”

While there were some knowledgeable adjusters, for many, unfamiliarity with catastrophes and the challenges of the area worked against everyone. “They didn’t know what to look for or how to price things in Xactimate [an estimating software program],” says Bach. An adjuster from Alabama didn’t know how to price the losses the way a New York adjuster would. There are different construction issues, debris removal costs and a host of other expenses that must be considered as part of the estimate. Melissa Luckman, practitioner in residence for the Disaster Relief Clinic at the Touro Law Center in New York agrees. “We’ve had clients with every issue — simple things like no overhead and profit was added in or no sales tax. Some clients had five to six feet of water and the adjusters just didn’t do a thorough job.”

Not prepared for the onslaught of claims

All of the insurers are having different issues. “It’s really the adjusters who went out from the [NFIP] firms where there are problems. People assumed they were underpaid, but that was not the case. The issues were adjuster dependent and not with the actual companies. A lot of adjusters went up to New Jersey and Connecticut and didn’t have the proper experience and no one looked at their work,” she explains.

“Adjusters have a lot of leeway. That doesn’t mean it was wrong or intentional, they just weren’t prepared for the onslaught of claims and didn’t have the training to handle catastrophe losses.”

Another issue involved all the different adjusters working on the files. “Some were thorough, but the majority were not,” says Luckman. “I think they were overwhelmed and didn’t have the experience for a catastrophic event. They were trying to get through as many files as possible to make more money. They were motivated by getting as many files as possible.”

“Adjusters are paid on a fee schedule,” explained Charles, who has worked more than 10,000 flood claims in his career. “A common excuse given by NFIP was that adjusters had no incentive to hold down claims. The refrain was always, “The more they write on the estimates, the more they get paid. But by

taking the low-hanging fruit and writing 60% of the damage on these claims, you could make more money because you could work more claims. It's called running and gunning. Every adjuster knows what it is and does it. They go for the easy stuff and leave the rest for someone else. The problem was the system broke down because there wasn't an effective way to deal with the other 40% of the claims. Adjusters were working 14 hours a day, seven days a week and there wasn't enough time."

Changed engineering reports

Luckman explained that the clinic provides pro bono legal services for any issue stemming from Hurricane Sandy. They have spoken to more than 2,700 households and taken 600 cases for representation. Originally the clinic was involved in just flood insurance litigation because so many people were reportedly underpaid. But now the clinic is seeing more issues with contractor disputes and mortgage modifications.

The clinic has seen a fair number of changed engineering reports, says Luckman. "Out of the 144,000 flood insurance claims, engineering issues were involved in only about 16,000 of those. If you change an engineering report that said the cause of the damage was Sandy to it was not Sandy, it's a huge blow to the homeowner. There are harsher consequences in terms of what homeowners have to pay and it maxes out their policies sooner."

She adds that engineers have told them, "The report I wrote was correct, but I never looked back at it. I noticed all of my reports were changed." She doesn't know if they were changed during the peer review, by the adjuster, the insurer or somewhere else in the process. Some answers may come to light with FEMA reopening thousands of cases. Luckman says that FEMA doesn't know where in the process the reports were changed and is trying to identify how it occurred.

Jeff Major with Canopy Claims Management in New York was going to be one of the experts for Ramey before the case settled. He has reviewed several hundred engineering reports and found similar language in the reports from multiple engineers. "In the majority of the engineering reports that I've reviewed on different houses and multiple scenarios, the findings were exactly the same on the reports." Not asked to write a report

He said he spoke to one engineer for those companies who said he was not asked to write a report, but was given a list of four things to look for during an inspection. He looked at those items and signed the report given to him. This occurred with multiple companies.

Charles described the earth movement exclusion in the NFIP policy and said it gave them a "hammer" to deny claims that should have been paid. "Subsidence or settlement were the terms used to deny coverage," and he says they were "bogus issues."

He believes the focus is weighted more towards profits than the greater good and doing what is best for the homeowner. "It's a perfect storm of badness with no fear of retribution. Bad faith is a very real sword for everyone but the NFIP. There are no checks and balances that apply to other insurers. If you don't have a penalty system, then any number of bad behaviors evolve out of it."

Erickson says he has never been asked to change a report in favor of an insurer, but that it is possible that some companies will write what they think the insurer wants to hear. "Insurers just want to know what they owe and they do not expect us to minimize the damage or tailor the report to a non-covered loss. If there is ambiguity or the cause of damage is due to multiple factors including a covered peril, in my experience insurers typically side with coverage."

Household items destroyed from flooding from Hurricane Sandy line California Street on Thursday, Nov 1, 2012, in Long Beach, N.Y. AP Photo/Kathy Kmonicek)

Blown out of proportion?

Multiple experts believe that the issues with the changed engineering reports were blown out of proportion by the mainstream media and exacerbated by attorneys, politicians and others seeking to take advantage of the situation. However, that does not excuse any companies that participated in these practices.

As far as the claims he's handled, Major says that he was not aware of anyone trying to manage the outcomes of the investigations. However there were incomplete estimates. "An adjuster may spend 25 minutes in a house and write an estimate for only half of the damage, like \$100,000 for \$250,000 worth of damage." He said he found gross underpayments in scope pricing and saw less than a handful of adjusters who went out of their way to write proper estimates. The majority wrote deficient ones. But he says that the responsibility doesn't fall solely on the adjusters. "The NFIP is not informing the adjusters. They are not being educated on what could be damaged and are not being instructed on what to look for."

Homeowners didn't understand their coverage

If there were changed reports or deficient estimates, they are only part of the problem. Homeowners bear some of the blame for not having the proper coverage or not understanding their coverage and policy limits, a fact confirmed by Luckman. "They didn't know their policy limits and what it covers. They had no idea what their coverages were." She said the first thing she does for clients is provide them with an explanation of flood insurance and what it does and does not cover. "Policyholders are stunned to see that. They didn't read their policies when they purchased them."