

Hurricane Sandy Victims Say Damage Reports Were Altered

New York Times

When Frank Johnston's insurance carrier rejected his claim that flooding from Hurricane Sandy had severely damaged the foundation of his Fire Island home, the company cited an engineering report that seemed to establish his problems were "unrelated" to the storm, and were caused instead by the "long-term deterioration" of wooden piers beneath his house. In reality, the original had reached the opposite conclusion. The engineering report, documents show, had been altered. Mr. Johnston is part of a growing number of homeowners who suspect that their engineering reports were similarly rewritten as part of an effort to minimize insurance payments to flood victims in New York and New Jersey after the 2012 hurricane. In November, allegations of altered reports prompted a federal judge overseeing more than 1,000 hurricane related lawsuits in the New York City area to order all drafts of the engineering reports be turned over, saying he believed such revisions could be "widespread." Lawyers for homeowners in the suits began reviewing the documents, and say they have already identified more than 500 doctored reports. Mitchell Shpelfogel, a lawyer for homeowners in Brooklyn, accused an engineering firm of fraud. CreditNicole Bengiveno/The New York Times That is how Mr. Johnston learned of the revisions on his report, and led a judicial panel for the Eastern District of New York to schedule a hearing this week to review the documents. Attorney General Eric T. Schneiderman of New York has begun a criminal inquiry, and the Federal Emergency Management Agency, which ultimately pays out the claims through the National Flood Insurance Program, is conducting an inquiry. To the homeowners, the revised reports reinforce long-held suspicions that insurers and their partners often collude against homeowners. Steven Bertolino, a Long Island lawyer who is representing Mr. Johnston, said engineering firms would have an incentive to produce reports favorable to insurance firms. "You're not going to bite the hand that feeds you," Mr. Bertolino said, "and if a report is not written the right way, you're not going to get work." Insurance and engineering firms deny any culpability. Even if some documents were altered by rogue actors, they say, the total would be just 1 percent of all Hurricane Sandy-related flood claims in the two states. Besides, said Robert P. Hartwig, the president of the Insurance Information Institute, an

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advocacy group for insurers, there is little motivation to cheat: Under federal rules, the money that is paid out ultimately comes from FEMA, not the insurance companies. If the practice was pervasive, many victims may never know what happened to them. Most simply accepted whatever settlement offer was presented, because challenging it can be stressful, said Benjamin Rajotte, director of the Disaster Relief Clinic at the Touro Law Center on Long Island. None of this might have emerged were it not for a chance encounter between homeowners and the engineer who first assessed their property. In Long Beach, on Long Island, an independent claims adjuster and an engineer told the homeowners, Deborah Raimey and her father, Larry Raisfeld, that the hurricane had damaged their house beyond repair. But their insurer declined to pay for structural damage, citing an engineering report blaming soil settlement, not the flood. When Ms. Raimey asked for another opinion, the insurer, Wright National Flood Insurance, asked the engineering firm, U.S. Forensics, to dispatch an engineer. They sent George Hernemar, the original engineer. He showed Ms. Raimey a copy of his first report; it differed substantially from the final version. She took a picture with her phone. Only later, after a lawsuit was filed, did Ms. Raimey learn that key findings, and not just conclusions, in Mr. Hernemar's report had been revised or deleted by a U.S. Forensics executive, Michael Garove, who did not visit the property, according to court documents. (The house has been torn down.) In court papers filed on Jan. 23, a lawyer for U.S. Forensics, Larry E. Demmons, played down the significance of the different versions. "It is common for law clerks to draft memoranda, orders and opinions for judges," Mr. Demmons wrote. "No one would ever seriously suggest (and rightfully so) that an opinion originally drafted by a law clerk, but later changed by a judge, was fraudulent or constituted a crime." In an email, Neal Conolly, president of Wright National Flood Insurance, said that "in no case would Wright pressure an engineering firm to reach a conclusion." Mr. Conolly also contended that insurers had no reason to be miserly when settling claims, pointing out his company earns a 1.5 percent fee on total damages. Still, in early November, the allegations of altered reports led the federal judge, Gary R. Brown, to order all defendants to produce all drafts of the engineering reports. Writing that "these unprincipled practices may be widespread," he called the Raimey case an example of "reprehensible gamesmanship" that was "concealed by design from the homeowners." Senators Charles E. Schumer and Kirsten E. Gillibrand of New York and Robert Menendez and Cory A. Booker of New Jersey, all Democrats, then pressed W. Craig Fugate, the FEMA administrator, to push insurance companies being sued to produce all their draft reports. On Dec. 5, Mr. Fugate sent a memorandum to insurance companies, asking them to turn over the drafts. Since then, dozens of cases similar to Ms. Raimey's and Mr. Johnston's on Fire Island have come to light. In Long Beach, floodwater damaged the floors and heating system of Marilyn Wellisch's house, according to the initial engineering report, but the final version blamed soil settlement instead. In Coney Island, Brooklyn, flooding washed

out the cellar and part of the first floor of Vadim Klimenko's home, according to the first report. But the revised one said "there was no evidence" that the flood had caused damage, even though the Klimenkos have yet to move back. "These cases, they just keep coming," said Denis G. Kelly, a lawyer who represents Ms. Raimey and Ms. Wellisch. In March 2013, Stephen and Sarise Dweck, whose home in Manhattan Beach, Brooklyn, flooded during the hurricane, were surprised when they learned that a report written by an engineer hired by their insurer, the Hartford Financial Services Group, had determined that cracks to the foundation of their house had not been caused by the storm. The engineer, hired by HiRise Engineering, had indicated otherwise during his visit. The Dwecks contacted the engineer, Harold Weinberg, who lives nearby. He, too, was perplexed, because the final report differed from his submission, yet included his signature and professional seal. "The false report issued by HiRise, purportedly in my name, is a forgery," Mr. Weinberg later wrote in an affidavit. The Dwecks' lawyer, Mitchell B. Shpelfogel, informed Hartford of what he believed was fraud in July 2013. After a lawyer for Hartford warned that the Dwecks' claim would be denied unless another opinion was sought, they relented, and that second engineer agreed with the insurer. The family filed an administrative appeal with FEMA but was denied. Now, newly discovered correspondence filed in federal court raise serious questions about the manner in which the Dwecks' claim was handled and is being cited by the plaintiffs in the suits as part of a broader allegation of racketeering. A few weeks after Mr. Shpelfogel's July 2013 email, according to court filings, a HiRise executive, Matthew Pappalardo, instructed employees to try to convince the engineers they hired to certify that the original and final drafts were unchanged by signing a "memo of understanding" that would be later backdated by the firm. Mr. Pappalardo said the employees should not view the request as "an intimidating and discouraging task" because the engineers "made a lot of money by working for us during the storm season." Mr. Pappalardo, reached recently on his cellphone, declined to comment. HiRise lawyers did not respond to calls and emails. While Hartford has denied any role in the altered reports, a spokesman, Thomas Hambrick, said that the company had "suspended all further use of the engineering firm while the allegations are being investigated." David R. Charles, a longtime claims adjuster in Jersey City, said insurance companies were naturally oriented toward minimizing payments. That orientation only hardened after Hurricane Katrina in 2005, when FEMA and the insurance industry were criticized as being overly generous and creating an atmosphere ripe for fraudulent homeowner claims. Mr. Fugate, the FEMA administrator, warned insurance companies in his recent memo that they needed to be vigilant about not tilting too far in the other direction. On Feb. 19, a three-judge panel will hold a hearing in Brooklyn to hear testimony on the engineering reports. In New Jersey, hundreds of new cases could soon emerge when engineering firms and insurance companies begin turning over all draft reports. Veterans of the industry said it might be

difficult in many cases for prosecutors to find evidence of an insurance company directly ordering an engineering firm to alter a report. There is sometimes a tacit understanding, they said, between engineers and insurers. “The reason that the engineering reports are like this is they know where their bread is buttered,” said Mr. Charles, now president of Master Claims Consultants. “It’s a sword that dangles over the head of every adjuster, every engineer.”