

## **Insurers accused of rigging Sandy flood claims with slanted reports, but evidence is elusive**

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By DAVID B. CARUSO and MICHAEL KUNZELMAN, Associated PressNEW YORK (AP) — When Superstorm Sandy hit the East Coast, flood insurance companies working for the Federal Emergency Management Agency dispatched an army of structural engineers to do some detective work. Their assignment: Find out how much damage to policyholders' homes was caused by surging seawater and how much predated the storm. Now, two years later, lawyers representing about 1,500 homeowners are trying to prove that some engineering firms hired to inspect the damage issued bogus reports to give skeptical insurers ammunition to deny claims. Broken foundations, the lawyers say, were falsely blamed on poor construction or long-term settling of the soil. Cracked and warped walls were written off as being due to old age. So far, there's been a little proof available publicly. Some engineers who worked the coast after the storm say a lot of homeowners were simply unaware of long-standing, but hidden problems exposed by the storm. But the issue got the attention of a federal judge in New York after a Long Island family uncovered evidence that an engineer who examined their property had been instructed by a supervisor to reverse his initial finding that the flood caused irreparable structural damage. U.S. Magistrate Judge Gary Brown ordered insurers to produce reams of additional records that could help reveal whether engineering contractors edited damage reports in ways that improperly minimized payouts to hundreds or even thousands of storm victims. "These unprincipled practices may be widespread," Brown wrote in his Nov. 7 order. New York's attorney general has opened a probe. FEMA has asked its inspector general to investigate. Homeowners made similar claims about doctored engineering reports after Hurricane Katrina, when some insurers were accused of trying to shift blame from the 2005 storm's winds to its monster flood, which wasn't covered by homeowner policies. This time, though, there is no wind-versus-water fight, and it isn't clear why any insurance company would have a motive to cheat. Most were merely processing claims for FEMA; none of their own money was at stake. The government pays insurers marginally more to approve a claim than to deny one. "There is simply no incentive ... to try to guide the engineer to an opinion, or to try to find no coverage," said Henry Neal Conolly, president of

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Wright Flood, the nation's largest flood insurance company. He wrote in an email to The Associated Press that he was "not sure at all what the alleged conspiracy is or could be not to pay claims." Lawyers for flood victims have suggested that fighting claims is so deeply ingrained in the insurance industry's DNA that it is applying the same bare-knuckle tactics to the National Flood Insurance Program out of force of habit. Others say the industry knows the program is under financial strain and is trying to help preserve it so they can continue to collect fees for selling and serving policies. Insurers can also be penalized by FEMA if they pay a claim later determined to be invalid, though in recent years those sanctions have been rare and light. From 2011 to 2014, FEMA imposed just \$742,000 in penalties on flood insurance contractors that were found to have overpaid claims, according to agency figures. That's a trifling amount compared to the \$8.1 billion in flood insurance payouts made to 132,000 Sandy victims. To homeowners who feel shortchanged, motive doesn't matter. "I can't say why it's happening, but it's definitely happening," said Chris Gerold, an attorney representing some of the roughly 1,500 homeowners in New York and New Jersey who are suing over what they say are improperly denied flood insurance payments. The scrutiny of engineering firms began after a New York couple, Deborah Ramey and Robert Kaible, raised questions about damage reports prepared on a badly flooded investment property they owned in Long Beach. The engineer who visited the house in December 2012 initially concluded that it suffered a partial foundation collapse in the flood. But those findings were rejected by a supervisor at his engineering firm, Louisiana-based U.S. Forensic. The manager then rewrote the report with a reverse conclusion, that the home's sloping floors and tilted walls were the result of long-term settling, not flooding. As a result, the bulk of the insurance claim was denied. The family complained so loudly that their insurer, Wright Flood, asked U.S. Forensic to do a second inspection. When the engineer returned, he was carrying his first draft of the report, which the family read and photographed. U.S. Forensic stood by its work, saying the report was changed because the original draft contained gross errors and unsupported assumptions. But after conducting hearings, Brown ruled Nov. 7 that the revisions, made by an engineer who hadn't actually visited the property, were "baseless." The judge also said some details within the report appeared to have been invented to cover up shortcomings of the initial inspection. He accused U.S. Forensic of engaging in "reprehensible gamesmanship" and ordered all insurance companies in Sandy-related litigation in New York to disclose any similar draft reports. Since then, a Texas lawyer, Steve Mostyn, has filed additional lawsuits accusing another engineering firm of misconduct. The suits said a manager at HiRise Engineering, of Uniondale, New York, completely rewrote two reports submitted by a freelancing Brooklyn engineer, Harold Weinberg, then affixed his signature without his consent. In one of those reports, Weinberg had written that "the entire cellar, including the

slab and the foundation walls” of a Brooklyn home “were damaged extensively” by the flood. That was replaced by a conclusion that “there were no structural damages observed that were caused by flooding.” The final report blamed cracks in the house on regular building settlement over many years. HiRise did not respond to a request for comment. Lawyers for most of the suing homeowners said they have been getting additional documents over the past few weeks and are reviewing them, but have yet to receive the bulk of the paperwork. At the urging of members of Congress, FEMA Administrator Craig Fugate wrote to insurance contractors Dec. 5 saying he was “deeply concerned” about allegations of underpayments and “disreputable engineering practices.” “We must do better,” he wrote. Fugate also expressed concern about criticism that insurance company lawyers might be on track to spend more to litigate claims than it would cost to settle them. On Dec. 2, a panel of magistrate judges said some industry lawyers were unreasonably delaying settlements and unnecessarily inflating legal costs for both sides. So far, FEMA has spent \$12.4 million on litigation related to Sandy flood insurance. After Sandy, engineering firms working for the insurance industry relied heavily on independent subcontractors with varying levels of experience to investigate damage. The job included a close examination to look for signs that the damage was there before the flood. In dozens of reports reviewed by the AP, engineers wrote that they ruled out flood damage after noticing previous repair attempts, like shims placed beneath sagging support beams or layers of patching material built up over a crack. Engineering experts told the AP that it isn’t always easy to say for sure what caused damage. Nevertheless, engineers were told not to hedge their findings or express uncertainty. “It is critical that you provide conclusive and unambiguous opinions as to causation,” said instruction materials that HiRise provided to at least one inspector. “Weakly worded conclusions using words such as ‘appears,’ ‘may have,’ ‘likely,’ etc. will be rejected by our clients.” Several independent engineers who inspected homes in Sandy’s aftermath told the AP they were occasionally challenged by supervisors who felt findings were unsupported by the evidence or could have been worded differently. But those engineers said they only changed their reports if they agreed with the suggested alterations. “At the end of the day, it was my judgment and my opinion,” said Frank Sadeghi, whose Island Heights, New Jersey-based firm, Morgan Engineering LLC, inspected about 100 homes for HiRise. John Mann, an engineer who inspected more than 100 homes after Sandy, said many of the changes suggested for his reports were grammatical in nature. Bill Mancini, an engineer who did inspections for U.S. Forensic, said the company gave him a template report containing boilerplate language he was supposed to use when he drafted his conclusions. But he said he was never pressured to turn in a dishonest report by his supervisors. Some homeowners and their building contractors, on the other hand, pushed hard for reports that could be used to justify a bigger insurance claim, he

said. "There's a lot of fraud," Mancini said. In training materials prepared for court-appointed mediators, two lead attorneys for flood insurance carriers, Gerald Nielsen and Bill Treas, said they believed that a "very large percentage" of the suits filed by policyholders involved "significant issues of misrepresentation." They also said the threat of an audit would keep insurers from settling lawsuits unless homeowners could document proof of additional covered damage. There are no FEMA financial penalties for insurers found to have underpaid claims. The government picks up most of the costs of litigation. "It is safer for the ... carrier to simply let the court rule at a trial upon the merits than to agree to a settlement not in accord with FEMA's view of FEMA's rules," Nielsen and Treas wrote.—Kunzelman reported from Baton Rouge, Louisiana.—The AP National Investigative Team can be reached at [investigate\(at\)ap.org](mailto:investigate(at)ap.org).