

Slack demand, but big promise still seen for Hurricane Sandy insurance mediation

http://www.nj.com/business/index.ssf/2013/08/hurricane_sandy_mediation_demand.ht...

One of New Jersey's efforts to help Hurricane Sandy victims resolve their insurance woes has had an unexpected result: few takers.

Three months ago, the state launched a mediation program to help Sandy-struck homeowners and business owners settle disputes with their insurers over storm claims.

While the program, which is run by the American Arbitration Association, excludes flood insurance claims, it is available to those with open claims for most other types of insurance, from homeowners to commercial property to business interruption.

The premise is simple: through a short, informal hearing held at no cost to the policyholder, an impartial mediator would try to help both sides work out their differences and reach an amicable settlement.

But the real benefit is that this would let policyholders and insurers avoid draining legal battles that drag on for years, the Department of Banking and Insurance noted in promoting the effort. Similar programs were held with great success in Florida, Louisiana and Mississippi after devastating hurricanes, the department also said.

Despite the push, policyholders have filed just under 500 requests for mediation since the program started in May. That's about 2.8 percent of the more than 17,000 non-flood Sandy insurance claims that the insurance department estimates are still open.

Ken Kobylowski, commissioner of New Jersey's insurance department, said these numbers have surprised him.

"Very candidly, I thought the take-up would be a little higher than it is," he said in an interview last week. And of the 488 requests for mediation that have been received, just under half, or 223 requests, have gone through a hearing so far.

By comparison, New York State, which established its own Sandy mediation program and began taking requests about two months before New Jersey, has held almost 1,800 hearings out of more than 2,300 requests, according to the state's Department of Financial Services.

It is not clear why New Jersey's program has lagged. Kobylowski thinks it has to do with a lack of public awareness. Officials from his department will be at Toms River's municipal building Monday, trying to drum up interest in the program. In the town alone, there are some 600 outstanding Sandy claims that would be eligible for mediation, the insurance department says.

"We'll keep the program up and running as long as we see a take-up on a weekly basis," Kobylowski said. Christine O'Brien, president of the Insurance Council of New Jersey, an industry group, said light demand for mediation could be a sign that insurers have been effective in working with their customers. Some carriers, after being notified of a policyholder's request for a hearing, have used the opportunity to take another look at the claim and possibly hammer out a settlement before the mediation, she noted.

But the limited number of takers also could be a sign that many of the insurance disputes from Sandy can't be fixed in a two-hour session, according to Amy Bach, executive director of United Policyholders, a San Francisco-based advocacy group that's been working with Sandy victims in New Jersey. That's because instead of fighting over the value of a claim, many policyholders are fighting to prove their loss is covered by their policy.

"There's no way that a mediation program is going to break through that type of entrenched legal dispute," Bach said. "The policyholder with a coverage dispute is much better off with a jury."

Still, there is some sign that mediation has paid off for those who have reached a settlement through it. According to Kobylowski, the average individual who sought mediation and reached a settlement walked away with about \$114,000, while the average commercial claim settled at around \$200,000.

For Jackie and John Romero, mediation was the cap to a long, horrific ordeal that started the night of Oct. 29.

In a story that's no doubt familiar to thousands along the Jersey Shore, the storm's monstrous tides and gale-force winds all but leveled the Ortley Beach home that they bought in 1964, and sent much of what they owned and treasured out into the Atlantic Ocean.

But while their flood insurance policy eventually paid out – after some prodding from their lawyers at Lowenstein Sandler – they said their homeowners insurance kept denying coverage for their damaged siding and roof.

"They were adamant: 'No, no, that's it. We're not responsible for anything,'" said John Romero, 74.

Homeowners policies typically exclude flooding, but cover damage from wind and other perils.

Eventually, the couple ended up in mediation. The hearing took just a few hours. Among other things, the couple said they were asked to recount how Sandy upended their lives, something that moved them to tears. Back and forth negotiations ensued until the insurer's attorney, after several phone calls to his

boss, agreed to cut a check, the Romeros said.

The Romeros, who didn't want to name their insurer or the settlement they received, said the amount was about half of what they initially sought.

But more importantly, they said, it enabled them move on. Combined with the payout from their flood insurance policy, the Romeros bought a new home in nearby Brick Township and moved in at the beginning of the month.

"The good news is the house is adorable," Jackie Romero, 70, said.

Of the cases that have gone through a mediation hearing so far, about two-thirds have reached a settlement of sorts. Other states that have held mediation programs after major storms had slightly better outcomes, according to data from the American Arbitration Association.

An effort in Louisiana after hurricanes Katrina and Rita in 2005 handled more than 15,000 cases with a settlement rate of about 74 percent. Mississippi settled 82 percent of the more than 5,000 cases after those storms, the association said.

In Florida, the association handled 2,400 claims after 1992's Hurricane Andrew with a settlement rate of 92 percent.

Kobylowski, the insurance commissioner, said even though New Jersey's settlement rate so far has been lower, it still means many fewer claims may end up in court one day.

Lynda Bennett, chair of the insurance coverage practice at Lowenstein Sandler in Roseland, said policyholders shouldn't expect to regain everything through mediation.

"People are not getting 100 cents on dollar, that's for sure." But insurers have come to the table in good faith and willing to resolve claims where there is coverage, she said.

"They understand they have to come with some money because if the cases doesn't get solved through mediation, they're incurring costs to pay attorneys to fight this in court," she said.

At the same rate, not every hearing goes in favor of the policyholder. About a third have ended in an impasse, data from the insurance department show.

That's happened with a handful of cases that Lowenstein Sandler handled, Bennett said. In these cases, the coverage simply didn't exist in the policy, she said. "Going to court would have been a losing process. Mediation was as far it could go."

But even if a hearing doesn't result in a settlement, it doesn't mean the effort was wasted, attorneys note.

Charles Yuen, chair of the insurance recovery and liability group at Scarinci Hollenbeck in Lyndhurst, said he brought a significant business interruption claim to mediation. And while the hearing ended without

being resolved, it did allow both air out their differences, he said.
“It was helpful to the process and negotiations continue,” he said.