

State-sponsored disaster claim dispute resolution

***ABA Tort Trial & Insurance Practice
Section Property Insurance Law
Committee Meeting, Carlsbad, CA
April 26, 2014***

About United Policyholders

- Not for profit
- A respected voice and trusted information resource for insurance consumers in all 50 states
- Founded in 1991, focused on disaster recovery
- Funded by donations and grants, fueled by volunteers
- Partnering with government agencies
- Active in the NAIC

Three Programs

- Roadmap to Recovery
 - *Helping people solve insurance problems after disasters.*
- Roadmap to Preparedness
 - *Increasing insurance literacy and promoting financial preparedness for adverse events*
- Advocacy and Action
 - *A voice for consumers in legislative, regulatory and court proceedings and in the media.*

Roadmap to Recovery™

- Workshops, webinars and meetings
- Distributing tools and resources, answering questions
- **24/7 help on the web:**
www.uphelp.org
- Currently in CO, NY, NJ, CT



Some claims go smoothly

Those that don't:

- Estimating challenges (access, costs, training)
- Mutual distrust/climate of suspicion
- Non standard policy language and lack of depreciation standards are confusing adjusters and claimants
- Adjuster settlement authority too low/turnover
- Biased experts on both sides/good help hard to find
- Fear re: water/mold/smoke/ash/health claims

Limits of state regulator consumer services/hotlines

- Can't adjudicate
- Can't provide legal advice
- Limited staff/time/will to intercede
- Limited ability to issue fines/penalties

Common NFIP hot spots:

- Unfamiliarity with flood policies/program rules
- Incomplete inspections and estimates
- Exclusions and limits re: basements, ACV
- Disputes over allegedly “pre-existing” damage, earth movement
- Allegations re: Independent Adjusters estimating low to avoid audit penalties
- Strict application of proof of loss requirements
- Lack of clarity re a “denial” that triggers SOL

Common HO claim hot spots:

- Conflicting inspection reports and estimates
- Disputes over allegedly “pre-existing” damage
- Scope and meaning of exclusions
 - Water damage e.g. ISO HO 3
- Application of deductibles, limits
- Personality conflicts/frustrated expectations
- Inconsistent treatment of neighbors
 - Contents itemization, coverage

Appraisal v. Mediation v. Litigation

- Scope versus value of claim
- Costs
- Experts
- Formality
- Duration
- Outcome
- Level playing field for consumers?
- Publicity/public perception

NFIP and HO alike:

“Old School” contractors estimates:

- Items lumped together
- No separation of rooms and areas
- Material list
- Labor estimated by the crew
- No unit costs

Apples to oranges with

- Xactimate
- Simsol
- IntegraClaim

Scope of Loss

(437) 811-1070



Bedroom 1

LxWxH 9' 8" x 9' 3" x 8'

302.67 SF Walls	89.42 SF Ceiling
392.08 SF Walls & Ceiling	89.42 SF Floor
9.94 SY Flooring	37.83 LF Floor Perimeter
77.33 SF Long Wall	74.00 SF Short Wall
37.83 LF Ceil. Perimeter	

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Note: Raising the house for the foundation repair will cause interior finishes to be damaged					
Seal/prime then paint the walls and ceiling twice (3 coats)	392.08 SF	0.80	313.66	(22.54)	291.12
Floor:					
R&R Carpet pad*	89.42 SF	1.37	122.51	<20.75>	101.76
Remove Carpet*	89.42 SF	0.24	21.46	<0.00>	21.46
Carpet*	102.83 SF	5.37	552.20	<96.25>	455.95
15 % waste added for Carpet.					
R&R Underlayment - 5/8" BC plywood	89.42 SF	3.39	303.13	<21.09>	282.04
R&R Joist - floor or ceiling - 2x10 - w/blocking - 16" oc	89.42 SF	3.45	308.50	(2.15)	306.35
Totals: Bedroom 1			1,621.46	162.78	1,458.68

Hallway

LxWxH 11' x 3' 4" x 8'



229.33 SF Walls	36.67 SF Ceiling
266.00 SF Walls & Ceiling	36.67 SF Floor
4.07 SY Flooring	28.67 LF Floor Perimeter
88.00 SF Long Wall	26.67 SF Short Wall
28.67 LF Ceil. Perimeter	

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Note: Raising the house for the foundation repair will cause interior finishes to be damaged					
Seal/prime then paint the walls and ceiling twice (3 coats)	266.00 SF	0.80	212.80	(15.30)	197.50
Floor:					
R&R Tile floor covering*	36.67 SF	15.19	557.01	(45.32)	511.69
R&R Underlayment - 5/8" BC plywood	36.67 SF	3.39	124.31	<8.65>	115.66
R&R Joist - floor or ceiling - 2x10 - w/blocking - 16" oc	36.67 SF	3.45	126.51	(0.88)	125.63

B.C. Moye Consulting, LLC.

15275 Collier Blvd Ste. 201
Naples, FL 34119
(239) 877-7090

Recap by Category with Depreciation

O&P Items	RCV	Deprec.	ACV
ACOUSTICAL TREATMENTS	80.74	1.03	79.71
CLEANING	739.22		739.22
	6,474.26		6,474.26
CONTENT MANIPULATION	2,255.52		2,255.52
GENERAL DEMOLITION	15,703.77		15,703.77
DOORS	2,313.48	40.90	2,272.58
ELECTRICAL	17,899.22	18.75	17,880.47
FLOOR COVERING - CARPET	1,977.40	347.97	1,629.43
FLOOR COVERING - CERAMIC TILE	6,105.68	580.96	5,524.72
FLOOR COVERING - VINYL	1,648.58	173.56	1,475.02
PERMITS AND FEES	41,262.54		41,262.54
FINISH CARPENTRY / TRIMWORK	2,993.76		2,993.76
FRAMING & ROUGH CARPENTRY	13,663.59	53.55	13,610.04
INSULATION	2,801.56	32.33	2,769.23
LIGHT FIXTURES	478.78	7.16	471.62
PLUMBING	5,134.65	38.82	5,095.83
PAINTING	2,896.12	212.87	2,683.25
SIDING	16,722.10	245.68	16,476.42
STAIRS	368.08	1.26	366.82
TILE	1,672.70	39.94	1,632.76
TIMBER FRAMING	3,728.00	15.00	3,713.00
TEMPORARY REPAIRS	2,722.63		2,722.63
WINDOWS - ALUMINUM	875.48	19.54	855.94
WINDOWS - VINYL	580.72	14.06	566.66
WATER EXTRACTION & REMEDIATION	732.64		732.64
O&P Items Subtotal	151,831.22	1,843.38	149,987.84
Base Service Charges	589.00		589.00
Storage Rental Tax	@ 7.000%		37.46
Overhead	@ 10.0%		15,245.77
Profit	@ 10.0%		15,245.77
Total Tax(Rep-Maint)	@ 7.000%	129.04	12,629.30
Total	195,707.56	1,972.42	193,735.14

Never easy

- Replacement Cost Value
 - The Total cost required to replace an item
- Depreciation
 - The useful life expended at the time of the loss
- Actual Cash Value
 - Replacement Cost Value minus Depreciation

Depreciation

- Source of much disappointment and many disputes
- Should be based on the estimated useful life of an object or a building material
- Should be calculated as a % of the RC of the item being depreciated

About the NFIP

- Standardized policies, strict claim rules
- Most NFIP policies sold and serviced via WYO insurers, some policies sold “direct”
- Appeals process through FEMA/FIA

Flood policies and claims are a world unto themselves

- Claims are adjusted by an IA
- Pressures = low initial estimates
- Unique limits and very specific rules
- Short deadlines for POLs
- “Denial” & Supplemental claims hazy
- Scant data on internal appeals process
- State regulators no jurisdiction (*but see* 42 U.S. Code § 4021)

The NFIP Proof of Loss:

- Strictly enforced deadline for submission (sometimes extended)
- Must be “sworn” and complete
- Specific forms must be used, IA usually prepares for the ph’s signature
- Supplemental claims are OK but don’t extend Statute of Limitations

Completed Proof of Loss

1234567890	U.S. DEPARTMENT OF HOMELAND SECURITY	O.M.B. No. 1660-0005
POLICY NO. FL	FEDERAL EMERGENCY MANAGEMENT	Expires JUNE 30, 2007
1/1/2012 - 1/1/2013	AGENCY	
POLICY TERM	NATIONAL FLOOD INSURANCE PROGRAM	
\$250,000.00	PROOF OF LOSS	Smith Insurance Agency
	(See reverse side for Privacy Act Statement and Paperwork Burden Disclosure Notice)	AGENT
AMT OF BLDG COV AT TIME OF LOSS		1412 Premium Lane
\$0.00		AGENCY AT
AMT OF CNTS COV AT TIME OF LOSS		1412 Premium Lane, Fat City, NY 11011
TO THE NATIONAL FLOOD INSURANCE PROGRAM:		
At time of loss, by the above indicated policy of insurance, you insured the interest of Arnold Duckbutter; 15 Main St.; Anytown, NJ 08742		
against loss by flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.		
TIME AND ORIGIN	A Flood loss occurred about the hour of o'clock	
	on the 29 day of October, 2012. The cause of the said loss was:	
	Superstorm Sandy	
OCCUPANCY	The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: Single family dwelling	
INTEREST	No other person or persons had any interest therein or encumbrance thereon except: Mortgage	
1. FULL AMOUNT OF INSURANCE applicable to the property for which claim is presented is		\$250,000.00
2. ACTUAL CASH VALUE of building structures		\$213,551.57
3. ADD ACTUAL CASH VALUE OF CONTENTS of personal property insured		\$0.00
4. ACTUAL CASH VALUE OF ALL PROPERTY		\$213,551.57
5. FULL COST OF REPAIR OR REPLACEMENT (Building and Contents).....		\$195,707.56
6. LESS APPLICABLE DEPRECIATION		\$1,972.43
7. ACTUAL CASH VALUE LOSS is		\$193,735.13
8. LESS DEDUCTIBLES		\$1,000.00
9. NET AMOUNT CLAIMED under above numbered policy is		\$192,735.13
The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of your insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.		
I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly an willfully making any false answers of misrepresentations of fact may be punishable by fine or imprisonment under applicable United States Codes.		
Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over to the insurer all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.		
The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to the insured with respect to the claim being made herein.		
The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of its rights.		

RC Proof of Loss form

- Form to complete in order to receive the Replacement Cost benefit of an NFIP policy, or the “recoverable depreciation”

SWORN STATEMENT IN PROOF OF LOSS

(For Use With Replacement Cost Coverages)

\$250,000.00

AMOUNT OF POLICY AT TIME OF LOSS

1/1/2012 - 1/1/2013

POLICY TERM

1234567890

POLICY NO.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY OR OTHER PERSON FILES A STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

Smith Insurance Agency

AGENT

1412 Premium Lane

Fat City, NY 11011

AGENCY AT

TO CARRIER

At time of loss, by the above indicated policy of insurance, you insured the interest of Arnold Duckbutter; 15 Main St.; Anytown, NJ 08742

against loss by Flood to the property described according to the terms and conditions of said policy and of all forms, endorsements, transfers and assignments attached thereto.

1. **Time and Origin** A Flood loss occurred about the hour of _____ o'clock _____ on the 29 day of October, 2012, the cause of the said loss was: Superstorm Sandy
2. **Occupancy** The premises described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever:
Single family dwelling
3. **Title and Interest** At the time of loss the interest of your insured in the property described therein was Mortgage

No other person or persons had any interest therein or incumbrance thereon, except: mortgage
4. **Changes** Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location, or exposure of the property described except:
none
5. **Total Insurance** The total amount of insurance upon the property described by this policy was, at the time of loss, \$250,000.00, as more particularly specified in the apportionment attached under Schedule "C," besides which there was no policy or other contract of insurance, written or oral, valid or invalid.
- | | |
|--|---------------------|
| 6. FULL REPLACEMENT COST of the said property at the time of the loss was | <u>\$275,435.18</u> |
| 7. THE FULL COST OF REPAIR OR REPLACEMENT is | <u>\$195,707.56</u> |
| 8. Applicable DEPRECIATION OR BETTERMENT is..... | <u>\$1,972.43</u> |
| 9. ACTUAL CASH VALUE LOSS is | <u>\$193,735.13</u> |
| 10. LESS DEDUCTIBLES and/or participation by the insured..... | <u>\$1,000.00</u> |
| 11. ACTUAL CASH VALUE CLAIM is | <u>\$192,735.13</u> |
| 12. SUPPLEMENTAL CLAIM, to be filed in accordance with the terms and conditions of the replacement cost coverage within <u>0</u> days from the date of loss as shown above, will not exceed..... | <u>\$1,414.39</u> |

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or preparation of proofs by a representative of the Insurance company is not a waiver of any of its rights.

State of NJ

County Of _____

Insured

Subscribed and sworn before me this _____

day of _____

Notary Public

Increased cost of construction (due to code upgrades)

- Elevation uncertainty
- Hazard Zone appeals

U.S. DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY
INCREASED COST OF COMPLIANCE PROOF OF LOSS

**NATIONAL FLOOD
INSURANCE PROGRAM**

O.M.B. No. 1660-0005
Expires JUNE 30, 2007

POLICY NUMBER 1234567890	POLICY TERM 1/1/2012 - 1/1/2013	AMOUNT OF BLDG. AT TIME OF LOSS \$250,000.00
AGENT Smith Insurance Agency	AGENCY AT 1412 Premium Lane Fat City, NY 11011	DATE OF LOSS 10/29/2012

TO THE NATIONAL FLOOD INSURANCE PROGRAM

At the time of loss, by the above indicated policy of insurance, you insured the interest of
Arnold Duckbutter; 15 Main St.; Anytown, NJ 08742

against loss by flood to the building property described according to the terms and conditions of said policy and of all forms, endorsements, transfers, and assignments and attachments thereto.

TIME AND ORIGIN: An increased cost of compliance claim was filed on 10/2/2013. The mitigation option selected was Elevating the structure

OCCUPANCY: The described building was occupied at the time of the flood loss as follows, and for no other purpose whatever as: Single family dwelling

INTEREST: No other person or persons had any interest therein or encumbrance thereon except
Mortgage

1. FULL AMOUNT OF ICC INSURANCE application to the property for which claim is presented is	<u>\$30,000.00</u>
2. REPLACEMENT COST VALUE of building structure	<u>\$275,435.18</u>
3. ACTUAL CASH VALUE of building structure	<u>\$213,551.57</u>
4. FULL COST OF COMPLIANCE not limited to the amount of ICC coverage	<u>\$45,000.00</u>
5. AMOUNT PAID under Coverage A	<u>\$192,735.13</u>
6. AMOUNT PAID under the ICC Coverage D (excluding salvage and subrogation)	<u>\$30,000.00</u>

The said loss did not originate by any act, design or procurement on the part of your insured, nothing has been done by or with the privity or consent of your insured to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss, no property saved has in any manner been concealed, and no attempt to deceive the said insurer as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

I understand that this insurance (policy) is issued Pursuant to the National Flood Insurance Act of 1968, or Any Act Amendatory thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B, and that knowingly and willfully making any false answers or misrepresentations of fact may be punishable by fine imprisonment under applicable United States Codes.

Subrogation - To the extent of the payment made or advanced under this policy; the insured hereby assigns, transfers and sets over to the insurer of all rights, claims or interest that he has against any person, firm or corporation liable for the loss or damage to the property for which payment is made or advanced. He also hereby authorizes the insurer to sue any such third party in his name.

The insured hereby warrants that no release has been given or will be given or settlement or compromise made or agreed upon with any third party who may be liable in damages to insured with respect to the claim being made herein.

The furnishing of this blank or the preparation of proofs by a representative of the above insurer is not a waiver of any of it's rights.

State of NJ

County of _____

Subscribed and sworn before me this _____ day of _____

Options for resolving disputes:

- Go up the chain of command but w/WYO hard to figure that out
- Appeal (within 60 days of denial letter)
- Mediation has not been an option
- Appraisal (must agree on scope)
- Lawsuit (12 months from first denial letter)

The internal FEMA appeal process:

- PH submits a detailed list of damaged property and values, supporting photographs, and/or a contractor's detailed estimate to repair damages with supporting photographs.
- Appeal gets reviewed by the Federal Insurance Administrator. A decision will be issued in 90 days.

Data on NFIP appeals?

- "National Flood Insurance Program: New Processes Aided Hurricane Katrina Claims Handling, but FEMA's Oversight Should Be Improved"
(GAO-07-169 A64187 2/15/2006)
- UP has sought appeals data via a FOIA

42 U.S. Code § 4021 - Participation in State disaster claims mediation programs

- After a disaster involving damage that may be covered under an NFIP policy, the Flood Program Administer ***shall*** (if requested by the state insurance commissioner) participate in a state sponsored nonbinding mediation program
- Unclear why no Sandy NFIP mediations

Mediation of flood damage possibly covered in HO policies

- Additional Living Expenses during mandatory evacuation
- Damage from trees that fell on house
- Wind-driven rain
- Sewage backup due to electrical failure of a pump or other device
- Other damage due to power outages or surges
- Ambiguous exclusion/ACC not enforceable

Regulator sponsored mediations

- Valuation, not coverage disputes
- Insurers repeat users of AAA
- Coverage disputes require sophistication
- Pros and cons outlined in “Best Practices for Post Disaster Insurance Claim Mediations”, United Policyholders, Dec. 2012
- Low dollar disputes, uneconomic to litigate

New Jersey Statistics

- 465,000 non-flood-related claims
 - \$3.4 million in recovery for homeowners
 - \$16,000 for an average recovery
 - \$103,000 average claim amount
 - 764 requests for mediation
 - 521 mediations completed
 - 347 mediations settled
- (as of January 22, 2014)

Low numbers in NJ

500 requests since the program started in May. 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,"

Newark Star-Ledger, August 2013

“A fraction...”

“Consumers using the state's mediation program are getting a fraction of what they believe is the overall cost. Some 216 consumers have recovered \$3.4 million, for an average of \$16,000. They sought on average \$103,000, Kobylowski said”.

Asbury Park Press, Jan. 10, 2014

NY Statistics

- AAA – panel discussion in NYC at Fordham Law 3/5
- 2700 cases filed, 1800 open, 600 final, 300 withdrawal
- 45% HO, 30% small business, 5% commercial property
- \$56,000 average and \$21,000 median claim for HO
- 64% settlement rate + 97% “customer satisfaction”
- 1500 policyholders and 1600 carriers polled per above

Issues and Concerns

- Settlement for zero raises possible ethical concerns
- 85-90% of policyholders not represented by counsel
- No reporting on amount or how data is collected
- Built in unfairness or intimidation vis a vie format?
- Mediator as interpreter for the insured?
- Proposal for “policyholder advocate”
- Policyholders unprepared (according to mediators)

Limitations of Mediation Programs

- Lack of state jurisdiction over NFIP and non-licensed insurers
- Data shows large disparity between claimed amounts and actual amounts paid
- Rhode Island, Connecticut did not implement post Sandy
- OK mediation program not activated post-Moore tornado

Litigation

- Hundreds of currently active complaints in state and federal courts in New Jersey, New York, Connecticut, and Rhode Island
- U.S. District Court for Eastern District of New York issued a January 14, 2014 order for a "miscellaneous civil case" in an attempt to consolidate the plethora of pending Sandy-related actions

Contact Information

Amy Bach

Executive Director

United Policyholders

amy.bach@uphelp.org

(415) 393-9990 Ext. 101

For More Information:

- Visit UP's website and search for more buying tips, claim tips, articles and helpful info at:

www.uphelp.org

The screenshot displays the United Policyholders website. At the top, the logo reads "United Policyholders. Empowering the Insured." with a search bar and the text "Not for profit. Not for sale." Below the header is a navigation bar with links: "About UP", "Our Programs", "Latest News", "Library", "Find Help", and "Support Us". The main heading is "How can we help you?" followed by a paragraph: "United Policyholders is a non-profit organization that's on your side; we don't take money from insurance companies. We give you the straight scoop on insurance matters. Guide you through the claims process. Answer your questions. Fight for your rights. Welcome to insurance help."

A featured section titled "Loss Recovery" includes a list of links: "Insurance Claim Tips", "State by State Assistance", "Sample Letters and Forms", "Tools and Resources", and "R2R Blog/Bulletin Board". To the right is an image of a damaged car.

Below this are three columns of content:

- Latest News:** Includes articles like "How to Do a 'Needs Analysis' Before you Buy Life Insurance" (dated Tuesday, January 03, 2012) and "A Home-Insurance Trap?" (dated Friday, December 02, 2011).
- "How To" Library:** Includes "Earthquake Claim Tips for Homeowners and Businesses" and "Roadmap to Recovery".
- Disaster Recovery Help:** Includes "Tropical Storms Irene and Lee - Property Damage Claim Help" (dated Friday, September 16, 2011) and "Joplin Tornado Insurance Claim Help" (dated Thursday, January 05, 2012).

On the right side of the page, there are buttons for "Claim Help" and "Underinsurance Help". Below these is a section "Read UP's Tip of the Month" for December 2011, titled "Take Advantage of UP", featuring an image of a gift box and a computer mouse. Further down are buttons for "Keep up with UP" and "Donate Today". At the bottom right, there is a Facebook link and a social media feed snippet.

The footer contains a disclaimer: "The material on this site is for informational purposes only and is not a substitute for legal advice. By using our Website, you agree to the Terms of Use and Privacy Policy." and copyright information: "© 2012 United Policyholders | Shop for a Cause | Share your story or ask an insurance question - Contact Us | Login | MsJones".