



**Legal Services of New Jersey**  
100 Metroplex Drive at Plainfield Avenue  
Suite 402, P.O. Box 1357  
Edison, New Jersey 08818-1357  
Phone: (732) 572-9100  
Fax: (732) 572-0066  
[www.lsnj.org](http://www.lsnj.org)  
[www.isnjlaw.org](http://www.isnjlaw.org)

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**STATEMENT OF**  
**LEGAL SERVICES OF NEW JERSEY**  
**BEFORE THE COMMITTEE ON**  
**BANKING, HOUSING, & URBAN AFFAIRS**  
**SUBCOMMITTEE ON HOUSING, TRANSPORTATION, AND**  
**COMMUNITY DEVELOPMENT:**  
**THE FLOOD INSURANCE CLAIMS PROCESS IN**  
**COMMUNITIES AFTER SANDY; LESSONS LEARNED AND**  
**POTENTIAL IMPROVEMENTS**

**Presented By:**  
**Maryann Flanigan, Esq.**  
**Supervising Attorney**  
**LSNJ Hurricane Sandy Legal Assistance Project**

**July 30, 2014**

Thank you for this opportunity to appear here today on behalf of the New Jersey Legal Services system, and on behalf of New Jersey residents who were affected by Storm Sandy. With funding from the Robin Hood Foundation, the Hurricane Sandy New Jersey Relief Fund and the state of New Jersey, Legal Services was able to begin providing legal assistance within two weeks after Sandy left our state. LSNJ established a statewide hotline (888-222-5765) which still operates and receives calls daily. LSNJ is the major legal assistance provider in the state of New Jersey for Sandy victims. Through our hotline, website, and targeted outreach, we have provided legal assistance in more than 2,500 cases to residents who were affected by Sandy. We have assisted even more residents through educational materials which are accessed through our website and distributed as flyers throughout the state. Even now in July of 2014, 21 months after the storm, new Sandy clients continue to contact our offices on a daily basis; many of these clients contact us for assistance with flood insurance claims.

Sandy-affected New Jersey residents have sought assistance from Legal Services on a breadth of issues that highlighted the need for legislative attention in certain areas, but one of the most prominent issues has involved underpayment or erroneous denials of flood insurance claims. Literally hundreds of New Jerseyans have come to LSNJ for help with their flood insurance denials and underpayments. Legal Services has served as a critical resource for disaster victims in need of assistance, especially for victims in the low to moderate income population. Today I will speak about the barriers that Sandy victims face when filing flood insurance claims, and I will highlight areas which can benefit greatly from careful attention and improvement.

**1. Flood insurance companies routinely undervalue claims, thereby creating barriers to repairing and rebuilding.**

Almost every client who contacted LSNJ regarding a flood insurance issue had the same problem: the flood insurance claim offer was insufficient. Flood insurance carriers often sub-contract the adjustment of flood claims to adjusters from all over the country; an adjuster from the midwest adjusted a client's claim for flood loss at approximately \$40,000 less than what the client needed in order to make the covered repairs. After examining the line-by-line estimate prepared by the adjuster, it was clear that materials could not be purchased in New Jersey for the unit prices listed. This low-balling of flood insurance claims happens all too often, and results in the insured suffering an unreasonable delay in making needed repairs to the home. The insured must either sacrifice quality by finding a way to purchase

materials which are within the covered price range, or accrue additional expenses by taking out loans to cover the cost of repairs and other living arrangements while fighting for a fair settlement offer.

One particularly egregious case occurred when a homeowner carried homeowner and flood insurance through the same private Write Your Own (WYO) insurance company. The client's home was on a sea-facing avenue on which all of the homes suffered approximately 4 feet of flood damage. The flood insurance department denied the claim stating that the damage was caused by wind-driven rain and the homeowner insurance department denied the claim stating the damage was caused by flood water. The client had to appeal both claims and several months passed before the homeowner insurance department sent a structural engineer to prepare a report regarding causes of damage. The client used the structural engineer report as evidence of flood damage, and the flood insurance department then handled her claim more fairly. At that point in time, the client had been displaced from her home for approximately seven months before the flood insurance department began to assess the scope of flood damage to her home.

A potential federal remedy for this issue would be modification of the existing incentive and penalty system for flood insurance companies when claims are undervalued.

**2. The process for appealing or supplementing a flood insurance claim is excessively complicated and Write Your Own (WYO) insurance companies often create extra requirements with which the insured must comply. The insurance companies offer little support or guidance to their insureds.**

When clients contact LSNJ for assistance with a flood insurance claim, we start out by providing a simplified explanation of how to appeal an underpayment or denial. While the National Flood Insurance Program (NFIP) requires "detailed repair estimates" in the Standard Flood Insurance Policy (SFIP) Dwelling Form 44 C.F.R. § 61 APPENDIX A (1)(VII)(H)(4)(f.), WYOs tend to reject detailed estimates if they are not prepared by specific software which creates an estimate report in an identical format to the one prepared by the claim adjuster. The insurance companies often do not offer any clear explanation or guidance to the insured when the estimate is rejected.

By the time that the client contacts us, the client typically has had several conversations with the flood claim agent about the underpayment or denial. After we explain the flood insurance appeal process, clients often express gratitude for the information and state that they did not understand the appeal process before speaking with LSNJ. That is to say, the client did not receive a clear explanation of the appeal

process from the flood claim agent. Clients also tell stories of unreturned phone calls and emails to claim agents, and the clients tend to have a sense of dismay about the entire flood claim process.

After a couple in Union Beach, New Jersey, submitted a proof of loss to appeal their denial, they received notice that their proof of loss was denied. The insurance company did not explain the reason for the denial or offer guidance for what could be submitted in order to lead to a reassessment or approval. Another client in Toms River wanted to speak with her flood claim agent regarding her appeal, and the claim agent said he could not speak to her because she hired a public adjuster. Although there is no regulation prohibiting an insurance agent from speaking to the insured after a public adjuster has been hired to assist with the claim, several clients tell us that their flood insurance agents refuse to speak with them. Then, when these clients have difficulty getting in touch with their public adjusters, they are in the dark about the progress of their appeal and they have no idea when they might be able to return to a normal and stable living situation.

A potential federal remedy would be straightforward guidance from the NFIP to all flood insurance companies which establishes a standard requirement that WYOs refrain from creating any extra requirements in the flood claim process.

**3. The statute of limitations for filing a lawsuit should not begin to run until a proof of loss has been submitted and denied in whole or in part.**

Client claim rights are limited severely by the lawsuit statute of limitations built into the SFIP. The statute of limitations clause explains that the client must file suit within one year of the first partial or whole denial of the flood insurance claim, without regard to the submission or review of a proof of loss. Therefore, clients may find themselves fighting with the insurance company for several months over a proof of loss form without any clear decision (approval or denial) while the statute of limitations clock is ticking. Then the client may still be fighting for an approval or denial of the proof of loss when the statute of limitations time runs out. If the proof of loss is subsequently denied, the client then has no recourse through the judicial process and must resort back to fighting the insurance company with another proof of loss through the same exact process.

A potential federal remedy would be amending FEMA regulations so that the limitations timeline does not begin to run until there is a partial or complete denial of a submitted proof of loss form.

**4. The complexities of the flood claim appeal process have a particularly negative impact on low to moderate income insureds.**

Low to moderate income New Jerseyans affected by Sandy were in some ways the worst-off in the flood insurance claim process. Not only were they displaced and forced to incur additional expenses in the relocation or rebuilding processes, but they also may have lost income if their jobs were affected by Sandy. When these clients sought assistance navigating the flood insurance appeal process, they found themselves unable to afford attorney fees. If they were fortunate enough to find an attorney who would provide services on a contingent fee basis, the low to moderate income client then had to make the hard decision of figuring out how to possibly repair the home with only two-thirds of what they needed to get from the insurance company. In many situations, attorneys would not take flood insurance appeal claims because the respective recovery amounts might be too low to compensate for the work required. With limited resources, LSNJ has been able to assist many of these low to moderate income New Jerseyans in navigating the appeal process. However, these clients find themselves struggling to pursue the appeal because of the costs for hiring a structural engineer or a contractor who can provide a “detailed estimate” in the format that the flood insurance provider wants. Also, these clients sometimes are unable to devote sufficient time to thoroughly preparing the appeal because of employment responsibilities and other day-to-day obligations.

A potential federal remedy would be simplifying the flood insurance claim appeal process and establishing a robust flood advocate as authorized under the Homeowner Flood Insurance Affordability Act so that insureds would be better equipped to effectively handle their appeals without incurring attorney expenses.

**5. Policy coverage terms should be written in clearer language and coverage should be more comprehensive in the case of a total loss due to flood damage.**

Many clients do not understand their coverage terms. They do not understand that the flood insurance policy does not indemnify for a total loss in the way that typical homeowner insurance policies do. A client whose home is covered for \$250,000 under the flood insurance policy does not expect to hear that although the home was substantially damaged and needs to be completely rebuilt after suffering five feet of flood water damage, the flood insurance policy will only pay for the part of the home which was

damaged by flood water – even if that amount is less than \$250,000. Policy terms should be written in clearer language and explained to the insured whenever the policy is renewed.

A potential federal remedy would be modifying SFIP language so that policies are written in clearer terms and a directive from the NFIP requiring flood insurance agents to explain coverage limits to the insured.