

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE ESTABLISHMENT)
OF A MEDIATION PROGRAM TO AID IN) ORDER
THE RESOLUTION OF CLAIMS RELATED)
TO STORM SANDY)

This matter having been opened by the Commissioner of the Department of Banking and Insurance (“the Commissioner”) pursuant to the authority of N.J.S.A. 17:1-8.1, 17:1-15, 17:29B-1, and N.J.S.A. App. A:7-1, and all powers expressed or implied therein; and

IT APPEARING that in October 2012, Storm Sandy struck the State of New Jersey with high winds and torrential rains, produced unprecedented severe weather conditions, and caused enormous storm surges and devastating flooding; and

IT FURTHER APPEARING that Governor Chris Christie, in response to this storm and the dangers and damage it caused, declared a State of Emergency pursuant to his powers under the Constitution and the statutes of New Jersey, particularly N.J.S.A. App. A:9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4, in Executive Order No. 104 which remains in effect to this day; and

IT FURTHER APPEARING that Storm Sandy caused widespread property damage in this State and has resulted in property owners filing a high volume of claims with their insurers related to the damage caused by the storm; and

IT FURTHER APPEARING that, pursuant to N.J.S.A. App. A:7-1, the Commissioner has the power to make, alter, amend, and rescind rules and regulations by order imposing any condition upon the conduct of the business of any insurance company that may be necessary or desirable to maintain sound methods of insurance and to safeguard the interests of policyholders,

beneficiaries, and the public generally, during the period of an emergency, which rules and regulations shall become inoperative when such emergency shall cease; and

IT FURTHER APPEARING that to alleviate the hardship being experienced by New Jersey residents whose property was damaged or destroyed by Storm Sandy, it is necessary and desirable to issue this Order establishing a Mediation Program for unresolved first party claims filed with insurers regulated by the Department of Banking and Insurance (“the Department”) to safeguard the interests of those policyholders and the interests of the public in general by encouraging swift and amicable resolution of Storm Sandy claims, rebuilding and recovery; and

IT FURTHER APPEARING that flood insurance claims insured through the National Flood Insurance Program (“NFIP”) pursuant to 42 U.S.C. § 4011 et seq. will not be available for participation in the Mediation Program as established in this Order; however, the Department will continue to monitor and assess the viability of securing NFIP participation in mediations pursuant to 42 U.S.C. § 4021; and

IT FURTHER APPEARING that similar mediation programs were established by other states in the wake of other weather-related disasters and storms such as Hurricane Katrina;

NOW, THEREFORE, IT IS on this 26th day of March, 2013:

ORDERED that a Storm Sandy Mediation Program (“the Mediation Program”) is hereby temporarily established in this State pursuant to the Commissioner’s powers cited above, particularly the emergency powers in N.J.S.A. App. A:7-1. The Mediation Program shall be available for the mediation of open and unresolved first party insurance claims under homeowners, automobile and commercial insurance policies for losses arising from Storm Sandy in this State and as further detailed herein. The Mediation Program shall continue in effect and operation until issuance of an Order by the Commissioner discontinuing the Program; and

IT IS FURTHER ORDERED that the following definitions shall apply as used herein:

1. “Administrator” means the entity administering the Mediation Program;
2. “Claim” means a dispute between an insurer and the policyholder(s) of a homeowners, automobile or commercial insurance policy relating to a material issue of fact, except for a dispute with respect to which:
 - (a) the insurer has a reasonable basis to suspect fraud and has referred the matter to the Office of the Insurance Fraud Prosecutor in the Department of Law and Public Safety;
 - (b) the amount in controversy is less than \$1,000;
 - (c) a loss has been incurred that was not related to Storm Sandy; or
 - (d) the denial is based on the nonexistence of the policy at the time of the loss;
3. “Department” means the New Jersey Department of Banking and Insurance;
4. “Insurer” means an insurance company authorized to transact the business of insurance in New Jersey pursuant to N.J.S.A. 17:17-10, an insurance company admitted to transact the business of insurance in New Jersey pursuant to N.J.S.A. 17:32-1, an eligible surplus lines insurer transacting business in New Jersey pursuant to N.J.S.A. 17:22-6.45, the New Jersey Insurance Underwriting Association established pursuant to N.J.S.A. 17:37A-1 and a risk retention group operating in New Jersey pursuant to N.J.S.A. 17:47A-3 and 17:47A-4;
5. “Mediation” means a procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding and settlement;
6. “Mediator” means an individual approved by the Administrator to mediate claims pursuant to this Order;

7. “Parties” means the insurer and the policyholder; and

8. “Storm Sandy” means the meteorological event impacting New Jersey on or about October 29, 2012; and

IT IS FURTHER ORDERED that all policyholders with open and unresolved claims against insurers arising from Storm Sandy may request a mediation conference pursuant to the procedures described below and any additional technical procedures to be established by the Administrator with the consultation and approval of the Department; and

IT IS FURTHER ORDERED that participation in the Mediation Program by policyholders is voluntary and it is their option to request a mediation conference; and

IT IS FURTHER ORDERED that insurers authorized or admitted to transact business in New Jersey and the New Jersey Insurance Underwriting Association shall be required to participate in the Mediation Program and resulting mediation conferences. Surplus lines insurers and risk retention groups may elect whether or not to participate in such mediation conferences on a case-by-case basis; and

IT IS FURTHER ORDERED that insurers (other than surplus lines insurers and risk retention groups) shall provide written notice to insureds with open and unresolved homeowners, automobile and commercial claims of the opportunity to request a mediation conference, and the process to request a mediation conference, as provided herein. For all claims that are open and unresolved as of the date of this Order, insurers shall provide such notice within five (5) business days of the Department’s issuance of a Bulletin advising of the selection of the Administrator, any additional technical procedures for the Mediation Program established by the Administrator and approved by the Department, and a sample notice for issuance to policyholders which shall be provided as an attachment to the Bulletin. For any claims filed or reopened after the date of

this Order, insurers shall provide such notice with the insurer's offer of claim settlement or any denial of the claim, whether in whole or in part; however, if the matter remains open for 60 days without a settlement offer or denial, the notice of mediation shall be provided no later than 60 days from the date the claim was filed or reopened; and

IT IS FURTHER ORDERED that, unless otherwise provided herein, the fees of the mediator and the Administrator shall be borne by the insurer, including surplus lines and risk retention groups that opt to participate in the Mediation Program established herein. All other mediation costs, fees, or expenses shall be borne by the party incurring such costs, fees, or expenses unless otherwise provided in a settlement agreement; and

IT IS FURTHER ORDERED that the Department shall select an Administrator as required by public bidding law for the Mediation Program, and that the Administrator shall establish the Mediation Program with the features as set forth in Exhibit A to this Order, attached hereto and made a part hereof, and any other additional technical procedures necessary to the operation of the program as approved by the Department; and

IT IS FURTHER ORDERED that the provisions of this Order establishing the Mediation Program shall be effective immediately, but the Mediation Program shall not be operative until selection of an Administrator and issuance of the Department's Bulletin advising of same.



Kenneth E. Kobylowski
Commissioner

Sandy Mediation Order/inoord

EXHIBIT A

MEDIATION PROGRAM FEATURES AND PROCEDURES

A) REQUESTS FOR MEDIATION:

1. Policyholders shall be able to request mediation conferences by written request transmitted to the Administrator via traditional mail, electronic mail, and via facsimile, and orally by telephone to the Administrator at a designated telephone number.

2. Requests for mediation by policyholders shall include the following information:
i) Name, address, and daytime telephone number of the policyholder and location of the property (if applicable and if different from address of policyholder); ii) The claim number and policy number for the policyholder at issue; iii) A brief description of the nature of the dispute; iv) The name of the insurer and any contact person at the insurer if known to the policyholder; and v) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

3. Upon receipt of a request for mediation, the Administrator shall review same to determine whether the matter satisfies the definition of “claim” above.

4. After review, the Administrator shall notify the policyholder and the insurer within three (3) business days of receipt of the request for mediation that either: (i) the request for a mediation conference is rejected and specify the reason for the rejection, or (ii) the request has been accepted. If the insurer is a surplus lines insurer or a risk retention group, the Administrator shall include in the notice a request that the insurer advise the Administrator whether it will participate in a mediation conference within 5 business days of the insurer’s

receipt of the notice.

B) SCHEDULING OF MEDIATION CONFERENCES AND MEDIATOR REQUIREMENTS/DISQUALIFICATION REQUESTS:

1. If the mediation request is accepted, the Administrator shall select a mediator and schedule the mediation conference so as to limit the travel and expense to the parties. The Administrator will notify each party of the date, time and place of the mediation conference at least ten (10) days prior to the date of the conference, unless a shorter period is agreed to by the parties.

2. All mediation conferences shall be scheduled no later than 30 days after receipt of a request for mediation if deemed eligible for participation in the Mediation Program by the Administrator.

3. Mediators shall be on the roster of persons qualified to provide mediation services in civil actions pursuant to the New Jersey Court Rules, specifically R. 1:40-12(a)(3). The Administrator shall also ensure the objectivity and qualifications of the mediators.

4. A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known prior to the mediation conference. Good cause includes a conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

C) CONDUCT OF MEDIATION CONFERENCES:

1. The mediator shall provide each party with the opportunity to present their side of the controversy.

2. Parties may present relevant documents and bring individuals with knowledge of

the issues to the mediation conference, such as adjustors, appraisers and contractors.

3. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties in reaching a settlement.

4. The representative of the insurer attending the mediation conference shall bring a copy of the policy and the entire claims file to the conference. He or she shall possess knowledge of the facts and circumstances of the claim, be knowledgeable of the provisions of the applicable policy and have authority to settle the full amount of the claim and to disburse the settlement amount at the conclusion of the mediation conference.

5. The parties may be represented by counsel or public adjusters at the mediation conference provided that five (5) days' notice of the representation is provided to the opposing party and the Administrator or assigned mediator.

6. The mediator may terminate the conference if he or she determines that either party is not negotiating in good faith, (e.g. is continuously disruptive, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator).

7. If the parties achieve an agreement on resolution of the claim at the mediation conference, the resolution shall be memorialized in writing by the mediator. If the resolution includes payment of settlement funds by the insurer to the policyholder, the insurer's representative shall disburse the settlement amount to the policyholder and any lienholder(s) as required by the insurer's business practices at the conclusion of the mediation conference, unless both parties agree otherwise.

8. The Department may, at its discretion, have a representative of the Commissioner attend and be present at any mediation conference.

D) POST MEDIATION:

1. The mediation shall be non-binding. However, if a settlement is reached at the mediation conference, the policyholder shall have three (3) business days within which he or she may rescind any settlement agreement, provided that the policyholder has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the mediation conference.

2. If a settlement agreement is reached and is not rescinded by the policyholder within three (3) business days as provided above, it shall act as a full and final release of all specific claims that were presented and actually settled at the mediation conference.

3. Mediation conferences shall be confidential. If a settlement agreement is not reached, oral or written statements made during the mediation conference shall not be admissible as evidence in a civil action concerning the claim, except with respect to any proceeding concerning an investigation of insurance fraud. Evidence otherwise admissible in a civil action shall not be excluded merely because it was disclosed during the mediation conference.

E) MEDIATION FEES AND BILLS:

1. The fees of the mediator and the Administrator shall be borne by the insurer as provided above unless: a. the insured fails to appear at a scheduled mediation conference and fails to have good cause for the failure to appear. Good cause shall consist of severe illness, injury or other unforeseen and uncontrollable emergency that could not have been reasonably remedied prior to the conference. If the policyholder fails to present good cause for a failure to appear at the mediation conference, then the costs of the cancelled mediation conference and any

rescheduled conference shall be split evenly between the parties.

2. The Administrator shall submit a bill to the insurer for the Administrator and mediator fees of each mediation conference. At the discretion of the Administrator and with the consent of the insurer, alternate billing arrangements are permissible, such as monthly or bulk billings.

3. The bill to the insurer shall be itemized and shall conform to the fee structure set forth in the Administrator's bid proposal and approved by the Department.