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### **ADJUSTMENT OF FIRST-PARTY CLAIMS POST-SANDY**

The purpose of loss adjustment, from both the standpoint of the insured and its insurer, is to identify the nature and extent of the damage covered by the applicable insurance policy. While this seems like a simple task, when catastrophic weather events, such as Hurricane Sandy, take place adjustment of first-party losses presents a host of potential pitfalls.

Initially, given the unprecedented number of claims for the region, insurers may have no alternative but to rely upon outside adjustment firms who are unfamiliar with a carrier's practices and who may simply be unreliable. Even where in-house personnel are available, the volume of claims assigned to any single adjuster may seriously curtail the adjuster's ability to fully evaluate the losses. After Hurricane Katrina and the Northridge earthquake in California, there were numerous lawsuits filed against insurers alleging improper adjustment of claims. Similar issues may be anticipated in the wake of Sandy.

In Doheny Park Terrace v. Truck Insurance Exchange, 132 Cal. App. 4<sup>th</sup> 1076 (Cal. App. 2005), the plaintiff condominium association suffered damage as a result of the Northridge quake. Its carrier adjusted the loss and found that the value of the claim fell within the association's deductible. Nine years later, the association hired an engineer who concluded that damages traceable to the earthquake were present and they far exceeded the deductible. Plaintiff instituted a breach of contract and bad faith suit against the insurer. The Court permitted the suit to proceed, irrespective of the two-year statute of limitations, based upon the allegation that the insurer had made an intentional misrepresentation upon which plaintiff reasonably relied to its detriment.

In Parkview Villas Assn. Inv. v. State Farm Fire & Casualty Ins., 133 Cal. App. 4<sup>th</sup> 1197 (Cal. App. 2005), the plaintiff brought an improper adjustment claim immediately after the insurer claimed that the majority of damages did not rise above the deductible. The insurer moved for summary judgment based on the findings of several of its engineers that performed an extensive review of the property and found no major structural damage. Plaintiff, in opposition to the motion, relied upon the statements of an independent public adjuster, registered professional engineer, and insurance industry expert that the claim was grossly undervalued by the insurer. The Court denied summary judgment for the insurer and allowed the case to move forward.

Hurricane Katrina victims filed similar claims of improper loss adjustment. In Ullah, Inc. v. Lafayette Ins. Co., 54 So. 3d 1193 (La. App. 2010), the insurer initially paid \$40,000 for a claim of theft of a commercial property following Katrina. A jury found the actual loss to be closer to \$450,000.

While many cases directed at the improper adjustment of first-party post-Katrina claims were allowed to proceed, carriers were successful in having some cases summarily dismissed. In River Bend Capital, LLC v. Lloyd's of London, 63 So. 3d 1092, (La. App. 2011), a commercial insured, at the advice of counsel, fully accepted the payment for damages from Hurricane Katrina to a thirty-nine unit apartment complex. The commercial insured later made a claim for additional damages. The Court dismissed this action because the check to the commercial insured made clear that it was "in full and final settlement of the Hurricane Katrina loss of August 29, 2005." The commercial insured endorsed the insurer's check. Moreover, the adjuster hired by the insurer went over the damages with the insured and its attorney "ad naseum" in calculating the amount to be paid. Under a theory of accord and satisfaction, the Court agreed with the insurer and dismissed the commercial insured's claims for additional damages.

New Jersey law recognizes insurance policies as contracts and places a good faith duty on the parties to any contractual agreement. Onderdonk v. Presbyterian Homes, 85 N.J. 171, 182 (1981). Agents of an insurance company are obligated to "exercise good faith and reasonable skill in advising insureds." Weinisch v. Sawyer, 123 N.J. 333, 340, 587 A.2d 615 (1991). Recognition is given to the usual and justifiable reliance by the insured on agents of the insurer in order to fulfill their reasonable expectations under a purchased policy. Harr v. Allstate Ins. Co., 54 N.J. 287 (1969). In terms of adjusting losses, it is clear that they must be done honestly and professionally. Carriers will invariably be held responsible for negligence by adjusters in failing to identify the full extent of the damage or for undervaluing it. As with the Katrina and Northridge situations, such claims may not arise until years after the causal event, seriously hampering fact development by both the insured and its insurer.

Both parties must be vigilant during the claims process, particularly when conditions are ripe for hidden concerns such as mold or structural problems. Schenck, Price, Smith & King's Insurance Practices Group has a wealth of experience in guiding both insurers and insureds through the claims process.

Schenck, Price, Smith & King's Hurricane Sandy Insurance Advisory Group has prepared a presentation on a wide range of topics which are likely to arise from Sandy-related insurance claims. Please feel free to contact any member of the Group with any questions which you may have at 973-539-1000.

Hurricane Sandy Insurance Advisory Group Members:

Frank M. Coscia, Chair	fmc@spsk.com
John M. Bowens	jmb@spsk.com
Stephen B. Fenster	sbf@spsk.com
James A. Kassis	jak@spsk.com
Jeffrey T. LaRosa	jtl@spsk.com
Gilbert S. Leeds	gsl@spsk.com
John D. McCarthy	jdm@spsk.com
Sidney A. Sayovitz	sas@spsk.com
Gary F. Werner	gfw@spsk.com

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<p><b>FLORHAM PARK</b> 220 Park Avenue PO Box 991 Florham Park, NJ 07932 Tel: 973-539-1000 www.spsk.com</p>	<p><b>NEW YORK</b> 116 West 23<sup>rd</sup> Street Suite 500 New York, NY 10011 Tel: 212-386-7628</p>	<p><b>PARAMUS</b> Country Club Plaza 115 West Century Road Suite 100 Paramus, NJ 07652 Tel: 201-262-1600</p>
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