

## **New Jersey Establishes a Mediation Program for Open Superstorm Sandy Insurance Claims, Notice of Which Must Be Provided to Eligible Policyholders by Friday, April 5**

Richard C. Bennett • 215.665.2114 • [rbennett@cozen.com](mailto:rbennett@cozen.com)

New Jersey has now joined New York in instituting a voluntary mediation program for insured victims of Superstorm Sandy with “open and unresolved first-party insurance claims.” The program became operative with the issuance of a Bulletin on Thursday, March 28, and insurers must provide all eligible policyholders with notice of their right to request mediation and detailed instructions about how to do so within five business days’ time, which is to say by Friday, April 5.

New York instituted such a program on February 25, 2013, when the state’s Department of Financial Services promulgated an emergency amendment to New York’s Insurance Regulation 64. The amendment created a voluntary program for policyholders who had sustained loss or damage to real or personal property — excepting motor vehicles and claims under the National Flood Insurance Program (NFIP) — between October 26 and November 1 of last year in the four Long Island counties, the three New York City counties, and three other counties (Orange, Rockland and Westchester) upriver from the city. If certain conditions were met, insureds with disputed or denied claims were entitled to request mediation using the Storm Sandy Mediation Claims Program of the American Arbitration Association (AAA). Any AAA fees were to be borne by the insurer. The mediation process was

non-binding, and it did not affect any other rights that the policyholder had (such as the right to request appraisal and the right to commence litigation).

On the same day, New Jersey’s Governor Christie and the state’s Department of Banking and Insurance (DOBI) Commissioner Ken Kobylowski announced New Jersey would be setting up a similar program, and the department released a Request for Qualifications to gather information about potential program administrators.

On Tuesday, March 26, the DOBI issued Order No. A13-106, establishing a Storm Sandy Mediation Program in New Jersey. It is available to any policyholder with “open and unresolved first-party insurance claims under homeowners, automobile and commercial insurance policies for losses arising from Storm Sandy in [the] State.” As in New York, claims involving the NFIP are not part of the program; in addition, “[s]urplus lines insurers and risk retention groups” are not required to participate, though they may elect to do so “on a case-by-case basis.” Finally, the mediation program does not apply to certain categories of claims, including those for less than \$1,000 and those where 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.”

As in New York, mediation fees are borne by the insurer. The process is both non-binding in nature and confidential.

Order No. A13-106 provided that the program was not operative “until selection of an Administrator and issuance of the Department’s Bulletin advising of same.” On Thursday, March 28, DOBI issued Bulletin No. 13-07, advising New Jersey had selected AAA as the administrator for this program. All eligible policyholders were required to be notified of the program and given detailed instructions on how to request a mediation within five business days of the Bulletin’s issuance, which is to say by Friday, April 5 in light

of the Good Friday holiday. The Bulletin provides a “Sample Notice from Insurer Regarding DOBI Mediation Program” that complies with the program’s notice requirements. A copy of the Bulletin and its attachment are available [here](#).

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*To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Richard C. Bennett at 215.665.2114 or [rbennett@cozen.com](mailto:rbennett@cozen.com).*