

Memorandum to: Hurricane Sandy Mediation Panel
From: The Hurricane Sandy Committee
Dated: November 20, 2014
Re: Pre-mediation conferences

It has recently come to the Committee's attention that a number of cases have been sent to mediation and have not successfully resolved due to one or another party lacking the necessary documentation to evaluate the claims.

Specifically, defendants in a number of the cases have informed the Committee that they could not make an offer to settle because they did not have certain documents, they needed to conduct another inspection of the property, and/or they needed to have the plaintiffs clarify certain issues. Since defendants in these cases are not permitted to depose the plaintiffs prior to the mediation, the Committee has Ordered plaintiffs to be present at the mediations and available to answer certain questions. The mediators are asked to enforce that rule as best they can and notify the Committee if there seems to be an issue.

With respect to documentation, the parties have been Ordered to voluntarily provide certain standard items to the extent they exist. In cases where defendants complain that they are missing certain documentation, they have been instructed to detail any such missing items and request that plaintiffs produce those items in advance of the scheduled mediation. In the vast majority of cases, counsel has not been sent to mediation until they certify that they have been provided with all of the documentation that they need to reasonably discuss settlement. There is no excuse for counsel to appear at the mediation without having received the necessary documentation or being told that it doesn't exist.

The Committee strongly urges mediators to hold a pre-mediation telephone conference with the parties at least two weeks prior to the scheduled mediation, to ensure that all documents have been exchanged and that any questions regarding the documentation or state of repairs have been resolved prior to the scheduled mediation. Among other things, the mediators may consider asking whether the following items have been exchanged or are still needed:

- 1) cancelled checks or other forms of proof showing payments made to contractors;
- 2) detailed, itemized invoices from the contractors who did the work, with line-by-line listings of the items used in effecting the repair and the cost of each;
- 3) date-stamped photographs of the repairs and remaining areas where damage was incurred but where repairs have not been made;
- 4) a detailed listing from plaintiffs of all items that have been repaired and the items that remain to be repaired;
- 5) a list of items that have been repaired but to a lesser kind or

- quality than prior to the storm;
- 6) proposals or estimates for any repair work remaining to be done;
 - 7) confirmation that an inspection is not needed before mediation can proceed.

If some of this information has not been provided because it does not exist, the mediator should consider advising the plaintiff to swear out an affidavit attesting to the relevant facts prior to the mediation. The Committee hopes that, if these issues are addressed at least two weeks prior to the scheduled mediation, the mediations will be more likely to succeed and we can avoid unnecessary delays and the waste of the mediators' and the parties' valuable time.

The Committee and the ADR Department greatly appreciate your efforts to mediate these cases. If you have questions or issues that arise during the mediation process, or if you believe any party is not participating in good faith, we encourage you to contact the ADR department at (718) 613-2577.