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## Investigations

### Kanstoroom Report - Update

TO: Jim Smith, Baltimore County Executive

From: Steve Kanstoroom

Date: 9/28/04

Re: NFIP Report Update

Dear Mr. Smith:

The investigation into NFIP claims related problems is ongoing. However, the significance of recent events has caused me to write to you today. I believe it is imperative for you to learn of events now in hopes you can act upon them to bring much needed relief to your constituents.

All of the information contained within the report you requested on August 3, 2004 is also of interest to the victims. Accordingly, I elected to make portions of the upcoming report's underlying data, as well as this update, available on [www.femainfo.us](http://www.femainfo.us).

#### **Root Causes – Training Disparity**

Many underlying causes for NFIP claims problems have been identified. One significant problem on the surface is an existing training disparity between *sales agents* and *claims adjusters*. Sales agents are trained to tell policyholders they will be covered for the unbroken chain of events flowing from the loss and they will be restored to their pre-flood condition. Claims adjusters are trained to pay only limited amounts for narrowly defined types of damages. Recently many adjusters have been telling claimants their flood insurance is merely a form of assistance.

[Click here](#) to view a transcript of the agent training .

[Click here](#) to watch and listen to FEMA's Director describe flood insurance as "some assistance".

As you know, adjusters do not get paid until they have a signed proof of loss and many victims have complained they were pressured to sign such forms. It generally takes months before a victim learns of their actual damages due to problems obtaining estimates. Yet FEMA tells its adjusters they will fare better if they settle claims within fifteen days, "that's even a better score" according to the trainer caught on video. The video shows the NFIP Director of Claims looking on while the statement is made. [Click here](#) to view this excerpt within the September 13 WINK broadcast.

A significant number of written reports from citizens describing how the adjusters' training has hurt them are now on file as well.

The entire adjuster training was recorded on videotape and is also on file.

### **Root Causes – Pricing**

Victims have produced considerable documents whereby they were offered new construction pricing in lieu of more costly repair and renovation figures. In these cases adjusters did not adjust upward to compensate for the difference.

I first documented this problem for the Maryland Insurance Commissioner and US Senate Committee on Banking, Housing and Urban Affairs in February. [Click here](#) to see one of the pricing documents.

Most recently, the publisher of the data was made aware of the impact this data was having on recent hurricane victims in the South. [Click here](#) to view his letter to Florida officials concerning the problems associated with settling claims based upon new construction pricing .

### **Task Force Conflict of Interest**

Although there are more than 6,000 flood adjusters in the country, the Task Force was largely comprised of the adjusters that originally wrote the problem claims in question, or who were associated with the same third-party adjusting firms that wrote the initial claims.

The US Senate instructed FEMA to conduct an independent review of the claims in question and to make all efforts to assure the claims were settled fairly. [Click here](#) to view these instructions included within the penultimate paragraph of the Hearing Record and Witnesses document.

FEMA insiders felt so strongly about Task Force examiners reviewing each others work, and connections between examiners and those that hired them, they forwarded internal Task Force materials to me in an effort to call attention to the issue. The materials included proof of loss forms with the same adjuster's names as on the Task Force employee roster.

### **Examiners' Credentials and References**

Industry insiders have contacted me regarding what they believe to be a lack of credentials held by some adjusters working as Task Force examiners as well as by some NFIP General Adjusters. I brought this matter to FEMA's attention in late June. Shortly thereafter, a memo was circulated in the Task Force requesting the resumes of all examiners. The following day another memo, backdated, was circulated by a more senior member whereby examiners were instructed to disregard the previous request.

[Click here](#) to view the redacted memos.

The unredacted memos were provided to CSC's General Counsel, Maryland Assistant AG Kathleen Birrairie and others in July.

FEMA's regulations do not require flood adjusters working on behalf of WYOs to have any specialized training. FEMA states the WYO's are free to establish any related qualifications or requirements for adjusters.

[Click here](#) to view the regulation on FEMA's website.

[Click here](#) to view a FEMA memo with additional information.

### **Contamination - Mold, Sewage and Fuel Oil**

Many mold and sewage contamination claims have not been properly paid. Experts agree these contaminants pose a serious health risk especially for very young children and the elderly. Nevertheless, contrary to FEMA's own documents written by their General Counsel's office, Task Force examiners routinely tell policyholders they have minimal coverage for remediation.

According to numerous industry experts, fuel oil is a known toxin, irritant and suspected carcinogen. Governor Erhlich recently released a press statement describing the completion of the cleanup of 600 tons of fuel oil contaminated soil associated with Isabel. The State and FEMA literally hauled away victims' yards due to the health risk. Yet at this time many of the same victims are *living in* homes contaminated with fuel oil. According to industry experts, initial symptoms associated with exposure may mimic stress and therefore victims may not know to seek treatment. And even though the odor may dissipate, experts agree the health risk remains.

In June I learned adjusters had been instructed to advise victims to remediate fuel oil contamination with what amounted to perfume. Yet, according to industry experts, there is no remediation available - only replacement. In late June I called this matter to FEMA's attention and also several of our US Representatives. In July I also brought the matter to the attention of CSC's Deputy General Counsel and MD Assistant A.G. Kathleen Birrairie. [Click here](#) to view two of the documents provided.

At this time Task Force examiners are continuing their refusal to allow for replacement of fuel oil contaminated building materials.

### **Notification Problems**

Many victims have written regarding a lack of notification of the review and being told by FEMA their request for a review had been lost. They have also written stating FEMA has told them they were ineligible for a review.

Insiders report piles of return mail due to address problems. They also report it was common knowledge many notices were never mailed. In short, FEMA has been quick to state how well the review was going while insiders tell a tale of utter chaos within the Task Force.

A glimpse inside the Task force can be seen on one document leaked from insiders. In it, adjusters who claim to have never received written policies regarding coverage issues are urged to "sound smart".

[Click here](#) to view the document.

### **Missing Federal Funds**

Insiders wrote to me, "FEMA has hired Price Waterhouse Coopers to conduct a comprehensive analysis and review of WYO company claims handling practices, methodologies and procedures, post Hurricane Isabel."

I recently met with US Senator Barbara Mikulski and her aides, aides for Senator Sarbanes and Counsel to the Senate Banking Committee regarding FEMA related issues. I included information regarding very large discrepancies between the funds reported to the Senate vs. funds contained within internal FEMA audits.

[Click here](#) to view a redacted version of an outline of our meeting.

The following day it was learned FEMA had terminated the independent audit of NFIP claims. [Click here](#) to view the letter referring to the termination.

### **IG Conflict of Interest**

Written Congressional Testimony of Insurance Industry lawyer Gerald J. Neilsen confirms the fact he, 1) represents every insurance company participating in the NFIP; 2) has lobbied effectively to make it much more difficult for policyholders to bring claims against the NFIP and the WYOs in State courts; 3) teaches the workings of the NFIP to adjusters, insurance agents and insurance company personnel; 4) has trained the Computer Sciences Corporation (NYSE:CSC) General Adjusters – the individuals responsible for training NFIP insurance adjusters, and; 5) trained DHS Inspector General Agents. [Click here](#) to view his Congressional Testimony.

### **Investigatory Issues**

Federal government insiders and others associated with the WYO's have made an effort to blow the whistle on what they perceive to be criminal wrongdoing. Part of those efforts has come in the form of a steady stream of documents and other information these people have sent or otherwise provided to me. Most recently I received documents, sent from FEMA via the USPO. The documents were produced by the FEMA General Counsel's office and are marked, "Attorney-client privileged – for FEMA and DOJ use only." These documents include FEMA's General Counsel's positions whereby many of the insurance claims denied to your constituents by the Task Force were, according to the document, covered losses.

Other more significant investigative problems also exist and are being provided under separate cover.

### **FEMA's Response**

I first shared substantive NFIP related issues with Bush appointee Anthony S. Lowe in March. Mr. Lowe seemed very concerned with what I had found. He personally made photocopies of some of my findings and seemed genuinely determined to correct what he viewed as NFIP irregularities. [Click here](#) to watch and listen to several of Mr. Lowe's comments. Additional comments and are also on video files.

FEMA states Mr. Lowe left for personal reasons. Insiders provided significant details about Mr. Lowe's abrupt departure.

Beginning in late March, I began working very closely with DHS Under Secretary Michael Brown's Deputy Director Trey Reid. Mr. Reid was very determined to correct NFIP's problems and was enthusiastic about taking over where Anthony left

off. He explained he was also looking forward to directing the NFIP overhaul called for in Senate Bill 2238.

On July 6th I met with Mr. Reid for five hours at FEMA. We spent thirty minutes of time reviewing twelve claims I was intimately familiar with, many of which were filed by your constituents. Each of the claims had spreadsheets and detailed information documenting the difference between what was paid and what was owed under the terms of the policy. The difference averaged fifty-four thousand dollars per claim, not including ICC.

In most every case, the items being disputed had been paid on a number of other claims. In addition, they were paid on my claim, a claim personally inspected by FEMA's Acting Director Trey Reid and the NFIP Director of Claims James Shortley. The claim was personally approved by Mr. Shortley.

We discussed the issue of FEMA's Task Force understated results. FEMA had released numbers to the press indicating the review had yielded 1.2 million dollars in adjustments. Yet at that time, the adjustments for a handful of claims victim's advocate Beth Midgett and I had been involved with also equaled 1.2 million dollars.

We also discussed the lack of NFIP instructions regarding the Task Force review. For example, many examiners were wholly unfamiliar with the May 7th claims guidance memo. The memo set forth some of the positions FEMA agreed to at the meeting you and I attended in March. One substantive point regarded contractors invoices and proposals were to be accepted in lieu of synthetic numbers. Another point spelled out adjusters were to cover losses as a result of water, moisture, mildew or mold damage. [Click here](#) to view the memo.

It was agreed the absence of such instructions was causing significant problems for policyholders and Task Force personnel. Mr. Reid agreed to have all items resolved within ten days. In the event an examiner made any determination differing from amounts submitted by the victims, Mr. Reid agreed to meet again with me to discuss any unresolved issues.

Unfortunately, FEMA had other more pressing matters unrelated to the NFIP it needed Mr. Reid to attend to. They are described under separate cover.

Since Mr. Reid was effectively removed from the process, FEMA's response has deteriorated to the point of stonewalling the victims and attempting to mislead our Congressional Representatives into thinking the victims have received the compensation to which they are entitled. FEMA refused to return numerous calls to our US Senators weeks prior to the recent storms thus leaving victims hanging in the balance. Contrary to Mr. Reid's position and the CFR, Task Force examiners in many cases have told the victims they are not due any additional monies.

I understand Mr. Reid's last day with FEMA will be this Friday.

### **Effect of Recent Storms**

The Task Force effectively disbanded prior to Tropical Storm Alex. While several supervisors and others remained, many victims reported their files were once again unable to be located within the Task Force. They also reported having to start over again with yet another examiner wholly unfamiliar with their loss.

Recently it has become abundantly clear FEMA is attempting to quiet the squeakiest wheels rather than implement policies to correct its problems.

Insiders report FEMA's General Counsel is very concerned with setting any precedents, hence their refusal to issue policies Mr. Reid said were on his desk in May.

To underscore the depth of FEMA's problems, on September 27th FEMA issued a bulletin directing WYOs to pay claims from recent storms without a proof of loss. Director Maurstad states they are having trouble finding adjusters due to the large number of claims. [Click here](#) to view the bulletin.

In reality, many adjusters say they are refusing to work flood claims, and turning those they have back to the carriers. They cite concerns over fines by Florida officials for underpaying claims, something Florida's CFO has vowed to do. They also cite concerns over an NFIP that is driven by verbal commands in lieu of written policies. As a result, seasoned adjusters are opting to work wind claims leaving Isabel victims in a place where it is absolutely essential for them to understand what they are entitled to receive.

### **Ongoing Impact to Baltimore County Residents**

I have personally inspected a number of your constituent's homes. I have found the Task Force has denied and is continuing to deny their claims as recently as last week. Yet I have a number of identical claims, including my own, for which the NFIP has approved payment. FEMA's current position regarding the NFIP being merely a form of assistance is exacerbating the problem.

Recently, Task Force adjusters have told victims to find a lawyer if their claims are not settled by September 18th, a day that has since passed. Our US Senators say no such deadline exists, yet the fact remains this is what victims are now being told by FEMA.

The personal toll this continues to take on families is devastating. As each day goes by more families are at risk of being permanently fractured. More children at risk of living in a single parent household. Many victims have heard tales of Task Force examiners threatening to find overpayments and demand monies back. This coupled with FEMA's failure to tell victims why they would likely benefit from a review has had a chilling effect on many victims.

In April, FEMA had agreed to include language in it's notice of review to victims detailing example cases where a review would likely result in additional payments. For example, "If you were told you are not entitled to mold clean-up costs, or water had to physically touch an item to be covered, you are likely due additional funds". No such notice ever came and many people felt they had no reason to request a review inasmuch as a federal employee had previously told them they had limited coverage. They had absolutely no reason to doubt the voracity of their adjuster, especially when wearing a blue FEMA jacket.

FEMA has told our US Senators they have approximately twenty outstanding Maryland claims. Yet it is possible to find twenty victims with unpaid claims in a small area, let alone the entire state. I believe it is most important for you to urge your residents that have yet to receive fair compensation for their loss to come forward. They could do so by registering on [www.femainfo.us](http://www.femainfo.us), or if they do not have internet access, by calling Baltimore County staff who could log their information for them.

FEMA's most recent attempts to minimize the numbers of families trapped in limbo should be of great concern to all of our elected officials. Their current structure is

paralyzed with concerns over doing the right thing. Some believe doing so will open the floodgates to an overwhelming number of claims from past events that have been improperly handled.