

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ORDER

IN RE HURRICANE SANDY CASES

14 MC 41

-----X

THIS DOCUMENT APPLIES TO:

ALL RELATED CASES

-----X

CASE MANAGEMENT ORDER NO. 12

In accordance with the Case Management Plan, many of the Hurricane Sandy cases have been proceeding to mediation. In order to facilitate mediations in the Hurricane Sandy cases, the Court held a training course for Hurricane Sandy mediators on May 22, 2014 and has made a panel of 95 mediators available to the parties. It has come to the Court's attention that the parties are having difficulty locating available mediators and that they have selected only a small number of the mediators from the panel of Hurricane Sandy mediators. As a result, the mediation process has been delayed. In order to remedy this problem, the Court hereby ORDERS the parties to use the following procedure when selecting mediators:

The parties shall request a mediator by sending an e-mail to NYED-SANDY-MED@nyed.uscourts.gov, indicating the period of time in which they wish to schedule a mediation. These emails will be distributed to the entire panel of mediators. Mediators who are available during the requested time period will then respond directly to the parties. The parties are expected to select one of the available mediators and work with that mediator to schedule the mediation at a date and time convenient to all. Failure to select a mediator will result in one being selected by the Court.

It has further come to the attention of the Committee that certain mediators have been having difficulty obtaining payment for their services. Counsel is reminded that it is their obligation to pay the mediators promptly.

Finally, pursuant to Judge Brown's November 7 Order in *Raimey v. Wright National Flood Insurance Co.*, 14-CV-461 (JFB):

Within thirty days of this Order, defendants in *all Hurricane Sandy cases* shall provide plaintiffs with copies of all reports described in CMO 1 not previously produced - *plus any drafts, redlines, markups, reports, notes, measurements, photographs and written communications related thereto* - prepared, collected or taken by any engineer, adjustor or other agent or contractor affiliated with any defendant, relating to the properties and damage at issue in each and every case, whether such documents are in the possession of defendant or any third party.

Order at 27.¹ The Committee has been advised that parties have been cancelling previously-scheduled mediations in anticipation of the production due by December 12. In light of all circumstances here, such further delays are unwarranted and unnecessary. Because it takes time to finalize resolutions reached at mediation (including, in many cases, obtaining FEMA waivers), the parties are directed to proceed with any scheduled mediations, aware that, should the production directed in *Raimey* affect the resolution reached, the parties will be free to renegotiate the settlement or withdraw prior finalization. Of course, nothing prevents defendants from accelerating the production in those cases in which mediation has been scheduled, thereby avoiding any further concerns.

The Clerk is directed to send copies of this Order the parties either electronically through

¹Notably, the *Raimey* Order finds that these materials "clearly fall within the ambit of CMO 1 and 3." Order at 16. The Committee agrees with this construction of its existing discovery Orders.

the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
November 20, 2014

/S/ CHERYL L. POLLAK
Cheryl L. Pollak United States
Magistrate Judge

/S/ GARY BROWN
Gary Brown United States
Magistrate Judge

/S/ RAMON E. REYES, JR.
Ramon E. Reyes, Jr.
United States Magistrate Judge