

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

CATHERINE HOWELL)
3683 First Avenue)
Edgewater, Maryland)

RUSSLYN DODSON)
3680 First Avenue)
Edgewater, Maryland)

KATHRYN SMITH)
6802 Gunder Avenue)
Middle River, Maryland)

ROBERT VALENTIN)
6916 Gunder Avenue)
Middle River, Maryland)

FREDERICK KOTRLA)
2822 Bay Drive)
Baltimore, Maryland)

HENRY HALE)
200-200A Bank Street)
Oxford, Maryland)

WAYNE BLACKMON)
3841 Bay Drive)
Baltimore, Maryland)

On behalf of themselves and)
all others similarly situated,)

Plaintiffs)

v.)

STATE FARM INSURANCE COMPANIES)
One State Farm Plaza)
Bloomington, IL 61710)
OMAHA PROPERTY AND CASUALTY)

Civil Action No. _____

CLASS ACTION COMPLAINT

Serve: S.D. Pannella)
309 International Circle, Suite 140)
Cockeysville, MD 21030)
))
TRAVELERS PROPERTY CASUALTY)
CORPORATION)
One Tower Square)
Hartford, CT 06183)
))
USAA GENERAL INDEMNITY COMPANY)
Serve: The Corporation Trust Incorporated)
300 East Lombard Street)
Baltimore, Maryland 21202)
))
SELECTIVE INSURANCE COMPANY OF)
THE SOUTHEAST)
40 Wantage Avenue)
Branchville, NJ 07890)
))
INDEMNITY INSURANCE COMPANY OF)
NORTH AMERICA)
Serve: The Corporation Trust Incorporated)
300 East Lombard Street)
Baltimore, Maryland 21202)
))
HARLEYSVILLE MUTUAL INSURANCE)
COMPANY)
Serve: Harleysville Mutual Insurance Co.)
828 Dulaney Valley Road, Suite 8)
Towson, MD)
))
Defendants.)
_____)

COMPLAINT

Plaintiffs Catherine Howell, Russlyn Dodson, Kathryn Smith, Frederick Kotrla, Robert Valentin, Henry Hale, and Wayne Blackmon, on behalf of themselves and all others similarly situated, allege as follows:

NATURE OF THE ACTION

1. This action arises from Defendants' failure to honor contractual obligations explicitly set forth in, or arising from, flood insurance policies issued to Plaintiffs and members of the proposed class. Plaintiffs filed insurance claims seeking payments under their policies to rehabilitate or restore their flood-damaged houses to pre-loss condition following Hurricane Isabel and were denied benefits expressly promised by contract and rights implied under contract.

2. The federal government urges, and in many instances requires, homeowners living in flood hazard areas to purchase flood insurance underwritten by the United States through the National Flood Insurance Program (NFIP). The purpose of the federal program is to protect homeowners from the losses associated with a flood catastrophe and, more broadly, to prevent the community-wide immobilization that results when funds to rebuild are not available after a major flood.

3. In an effort to reach the largest number of homeowners, the federal government invited private insurance companies to market and issue flood insurance policies under the NFIP. The overwhelming majority – approximately ninety percent (90%) – of federal flood insurance policies are underwritten by the federal government but issued and serviced by private insurance companies through a special NFIP program. Each participating company is responsible for handling all claims issued in its name, and has ultimate authority to adjust and settle flood loss claims consistently with its general claims practices. The participating insurance companies are compensated by the federal government for providing these services but bear no financial risk in settling these claims.

4. Plaintiffs are homeowners whose properties were damaged by flooding during Hurricane Isabel. Each was insured against flood losses through the federal program by a participating

insurance company. After Hurricane Isabel, these insurers mishandled Plaintiffs' claims in key respects and ultimately failed to pay proceeds that the policyholders were entitled to.

5. Delays and failures in the handling of these claims have left these Plaintiffs, and thousands of others, living for months in trailers, temporary shelters and rental apartments while their homes sit uninhabitable. Some families have been forced to leave their neighborhoods and communities. Some families have moved in with local relatives, but have needed to split up their children or leave pets behind. Others have moved into crowded trailers or temporary shelters, lacking in privacy and basic amenities like proper heating and bathtubs. The resulting stress of these displacements has been enormous.

6. While waiting for their insurance companies to pay amounts well within their policy limits, Plaintiffs have drawn upon personal savings, retirement funds, and small business loans to collect enough money to restore and rebuild their houses, and many have realized all of their assets and credit will not be sufficient to fund the restore them to pre-flood condition. Plaintiffs seek payment of the full replacement costs, up to the limits of their insurance policies, to restore their houses to their pre-flood condition.

PARTIES

7. Plaintiff Catherine Howell is a citizen of the State of Maryland. She owns the residential property located at 3683 First Avenue, Edgewater, Maryland (Anne Arundel County), which was insured against flood damage losses by Indemnity Insurance Company of North America.

8. Plaintiff Russlyn Dodson is a citizen of the State of Maryland. She owns the residential property located at 3680 First Avenue, Edgewater, Maryland (Anne Arundel County), which was insured against flood damage losses by Travelers Property Casualty Corporation.

9. Plaintiff Kathryn Smith is a citizen of the State of Maryland. She owns the residential property located at 6802 Gunder Avenue, Middle River, Maryland (Baltimore County), which was insured against flood damage losses by USAA General Indemnity Company.

1. Plaintiff Robert Valentin is a citizen of the State of Maryland. He owns the residential property located at 6916 Gunder Avenue, Baltimore, Maryland (Baltimore County), which was insured against flood damage losses by Selective Insurance Company of the Southeast.

2. Plaintiff Frederick Kotrla is a citizen of the State of Maryland. He owns the residential property located at 2822 Bay Drive, Baltimore, Maryland (Baltimore County), which was insured against flood damage losses by Harleysville Mutual Insurance Company.

3. Plaintiff Henry Hale is a citizen of the State of Maryland. He owns the residential property located at 200-200A Bank Street, Oxford, Maryland (Talbot County), which was insured against flood damage losses by Omaha Property and Casualty.

10. Plaintiff Wayne Blackmon is a citizen of the State of Maryland. He owns the residential property located at 3841 Bay Drive, Baltimore, Maryland (Baltimore County), which was insured against flood damage losses by State Farm Insurance Companies.

11. Defendant State Farm Insurance Companies (“State Farm”) is the nation’s largest insurer of homes and is part of the State Farm Group, an Illinois corporation that provides a wide range of insurance and financial products and services. State Farm participates in the NFIP Write Your Own (“WYO”) program in Maryland, North Carolina, Virginia, West Virginia, New Jersey and Delaware. On information and belief, State Farm issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

4. Defendant Omaha Property and Casualty (“Omaha”) provides homeowner, auto, watercraft, personal excess liability and flood insurance nationwide, sold through Mutual of Omaha representatives and a network of independent agents. Omaha participates in the NFIP Write Your Own program in Maryland, North Carolina, Virginia, West Virginia, New Jersey and Delaware. On information and belief, Omaha issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

5. Defendant Travelers Property Casualty Corporation (“Travelers”) is the nation’s second largest property liability insurer and provides commercial and personal property liability insurance and asset management services. Travelers participates in the NFIP Write Your Own program in Maryland, North Carolina, Virginia, West Virginia, New Jersey and Delaware. On information and belief, Travelers issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

6. Defendant USAA General Indemnity Company (“USAA”) is a worldwide association and provides insurance and financial services to the U.S. military community and their families. USAA participates in the NFIP Write Your Own program in Maryland, North Carolina, Virginia, West Virginia, New Jersey and Delaware. On information and belief, USAA issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

7. Defendant Selective Insurance Company of the Southeast (“Selective”) is a regional company that provides a broad range of insurance and alternative risk management products and services, and is among the ten largest flood insurance writers in the country. Selective participates in the NFIP Write Your Own program in Maryland, North Carolina, Virginia, West Virginia, New Jersey

and Delaware. On information and belief, Selective issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

8. Defendant Indemnity Insurance Company of North America (“Indemnity”) is a division of ACE Group of Companies and provides property, casualty, accident and health insurance services to consumers across the United States. Indemnity participates in the NFIP Write Your Own (WYO) program in Maryland, North Carolina, Virginia, West Virginia, New Jersey and Delaware. On information and belief, Indemnity issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

12. Defendant Harleysville Mutual Insurance Company (“Harleysville”) is a regional underwriting organization that operates in thirty-two Eastern and Midwestern states offering property and casualty insurance coverage to businesses and individuals. Harleysville participates in the NFIP Write Your Own program in Maryland, North Carolina, Virginia, West Virginia, New Jersey and Delaware. On information and belief, Harleysville issued hundreds of flood insurance policies through the WYO program that were in effect during September 2003.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over all claims asserted in this civil class action under 42 U.S.C. § 4053 (jurisdiction of disputes arising from adjustment and payment of flood insurance claims).

22. Venue is proper in this district under 28 U.S.C. § 1391 and 42 U.S.C. § 4053, because Defendants issued the flood insurance policies for properties, owned by Plaintiffs, located in

this district. Defendants failed to pay fully claims under these insurance policies for flood damage at these properties.

BACKGROUND

23. Congress enacted the National Flood Insurance Act of 1968 (“NFIA”) to ensure that flood losses would be compensated through cooperative efforts of the federal government and the private insurance industry to make flood insurance available on reasonable terms and conditions to any persons needing such protection. Specifically, Congress recognized that flood disasters create extraordinary and pervasive personal hardships and economic distress in affected communities and authorized the National Flood Insurance Program (“NFIP”) to undertake various preventative and protective efforts aimed to reduce losses caused by flood damage.

24. The NFIP serves two major functions: underwriting flood insurance and leading floodplain management. Homeowners are eligible for federal flood insurance when their communities have agreed to adopt and enforce minimum floodplain management ordinances that are approved by NFIP; federal insurance premiums are discounted for those living in communities where floodplain management programs exceed the NFIP minimum requirements.

25. The House and Senate reports that accompanied the legislation creating the NFIP stated a Congressional intent to “provide the necessary funds promptly to assure rehabilitation or restoration of damaged properties to pre-flood status or to permit comparable investment elsewhere.”

26. Since 1978, the Federal Emergency Management Agency (“FEMA”) has operated the National Flood Insurance Program (“NFIP”). FEMA initiated the Write-Your-Own insurance program (“WYO”), authorizing private insurance companies to market and issue flood insurance

policies on behalf of FEMA. Today, approximately ninety percent (90%) of all flood insurance policies are issued by private insurance companies participating in the WYO program.

27. Under the regulations implementing the NFIA, a WYO carrier is only authorized to issue a flood insurance policy after confirming that the subject property is eligible for federal flood insurance.

28. By law, a WYO company is solely responsible for its obligations to policyholders under any flood insurance policy issued in the company's name. A WYO company is authorized under the NFIA to adjust all flood loss claims in accordance with general company standards using staff adjusters or independent contractors selected and supervised by the company. The WYO company, further, determines when and how adjusters will be compensated for their work on flood claims. By agreement with the Federal Insurance Administration, a WYO company is expected to settle a claim, on average, within 45 days of receiving a notice of loss from the policyholder.

29. The claim adjustments made by WYO companies are binding upon the Federal Insurance Administration.

30. WYO carriers retain a portion of the flood insurance premiums collected to cover their marketing, operating and administrative expenses. Further, fifteen percent (15%) of the premiums on these policies may be retained as a commission allowance. And, finally, WYO carriers are compensated for adjusting all flood claims paid.

31. The terms of all flood insurance policies issued under the NFIA are identical, whether the issuer is the federal government or a WYO insurance company. These policies set forth the

terms approved by FEMA and codified as the Standard Flood Insurance Policy (“SFIP”) at 42 C.F.R. § 61 App. A(1).

1. Under the SFIP, a homeowner is reimbursed for all covered losses up to his policy limit. Policyholders are entitled to the replacement cost of flood losses; depending on the level of coverage selected by the policyholder, these replacement costs may be discounted to reflect physical depreciation. Further, where a policyholder is required to undertake repairs or construction necessary to achieve compliance with a state or local floodplain management law, the policyholder is entitled to a flat payment of \$30,000 to fund that work. A policyholder is required to file a proof of loss, based upon the policyholder’s own judgment concerning the amount of loss within 60 days of the flood; an adjuster’s services, during the filing period, are provided as a courtesy to the policyholder.

32. According to FEMA, at the end of September 2003 nearly four and a half million flood insurance policies were in force nationwide. More than 250,000 of these policies were held by people living in states affected by Hurricane Isabel: 17,500 in Delaware; 51,500 in Maryland; 183,000 in New Jersey; 102,700 in North Carolina; 78,000 in Virginia; and 20,000 in West Virginia.

HURRICANE ISABEL

33. In September 2003, Hurricane Isabel, roared through the mid-Atlantic region of the East Coast causing catastrophic damage in Maryland, North Carolina, Virginia, West Virginia, New Jersey, Delaware and the District of Columbia. At landfall, the storm was measured as a Class 2 Hurricane. In Maryland, for instance, the winds of Hurricane Isabel created a historically high storm surge on the Chesapeake Bay, causing widespread flooding. By conservative estimates, the damage to residential properties caused by this flooding will cost hundreds of millions of dollars.

2. Approximately 25,000 flood insurance claims related to Hurricane Isabel were filed during the weeks after the storm. The WYO insurers have failed to handle these claims in a prompt and fair manner. In media coverage, Congressional testimony and independent surveys, common and widespread deficiencies in claims adjustment, processing and settlement have been reported. Specifically, Plaintiffs allege that Defendants, *inter alia*: failed to advise policyholders that FEMA extended the 60-day limit for filing an insurance claim under the SFIP to 120 days; pressured flood victims to accept the company's allotted claim estimates by uniformly and erroneously informing them that they would receive no insurance benefits if they did not sign the adjuster's proof of loss within 60 days of the loss; compensated adjusters in a manner that created a conflict of interest between policyholders and adjuster, depriving policyholders of contract benefits; uniformly construed policy terms to exclude a variety of flood-related damage that should have been covered; and used inaccurate and unrealistic pricing data to calculate repair and replacement costs, ultimately generating artificially low damage estimates and settlement offers.

34. In February 2004, the office of the County Executive of Baltimore County released a report by former Maryland Insurance Commissioner Steven Larsen ("the Larsen Report") describing numerous deficiencies in the insurance industry's response to flood victims. Among other things, the Larsen Report concluded that:

- (a) "[T]he current process for settling damage claims may result in significant losses to property that should be, but will not be, covered under the applicable flood policies. There is a pattern of claim settlement offers by insurers that some evidence suggests are not adequate to repair or replace damaged homes."

- (b) Ninety-seven percent (97%) of the flood victims who participated in the Larsen survey indicated that proposed or actual settlement of their insurance claims would not be sufficient cover their losses. Such shortfalls were typically discovered when the homeowners asked local contractors to review, and bid upon, the proofs of loss prepared by their insurers.
- (c) Flood victims were uniformly told that they would not be paid if they did not sign the insurance company's adjuster's proof of loss within the filing period. As a result, many of these policyholders signed proofs of loss prepared by WYO adjusters, even though they strongly believed that the adjusters had underestimated both the scope of damage and the associated costs of repair at their properties.

3. At a March 2004 Senate hearing on reauthorization of the National Flood Insurance Program, questioning and testimony highlighted systemic problems in claims handling such as:

- (a) The compensation scheme used to pay adjusters – who typically are not salaried insurance company employees – creates a conflict of interest between adjusters and policyholders. Since the adjuster is not paid for adjusting a claim, or even reimbursed for out-of-pocket expenses incurred while handling the claim, until the claim is settled, the adjuster has an incentive to settle the claim as quickly possible. To settle claims quickly, adjusters pressured policyholders to sign proofs of loss without allowing the policyholders time to confirm the accuracy of the claim with contractors or appraisers. Further, in an effort of speed settlement of the claims, adjusters eliminated items from proofs of loss that might be disputed during subsequent review by the insurer. As a

result, policyholders were denied compensation for flood losses that should have been provided under their insurance policies.

- (b) WYO insurers have settled claims using price data and construction estimating software that do not reflect the actual costs of repair and renovation work following a natural disaster. For instance, construction data published by Craftsman Book Company is licensed by Simsol Software, which writes programs used by property insurance adjusters. The Craftsman Book data, however, reflects the costs of well-planned and managed new construction. The Craftsman Book Company specifically recommends that its labor estimates should be increased by twenty-five to fifty percent (25-50%) for work done following a major disaster and that materials costs after a major disaster are also likely to be higher. Further, the publisher advises that its estimates represent costs to the installing contractor and do not reflect the contractor's overhead and profit, which would typically add an additional twenty-five to fifty percent (25-50%) to the consumer's cost.
4. The *Baltimore Sun* has reported questionable practices in claims handling, including:
- (a) "The questionable use of price guides by insurance adjusters....may be to blame for many of the low settlement offers reported by homeowners seeking to repair damaged houses from Maryland to North Carolina, insurance and construction experts say. The pricing structure in computer software that some adjusters used....relies on estimates for new construction. But documents and interviews with policy holders show that the software was used after Isabel to work up settlement offers for repair or restoration jobs – work that is generally more expensive."

- (b) Insurance adjusters “who adjusted claims after Tropical Storm Isabel said slow payments for adjusters encourage them to work as quickly as possible and to err on the side of rejecting claims that might be disputed by the federal program.”

35. Independent catastrophe adjusters have publicly voiced numerous criticisms of the insurance industry practices. For example:

- (a) “As every loss is different, as you so well know, no one can place an iron-clad price on a particular operation of restoration without knowing the conditions and inspecting them. This, in and of itself, begs to be remembered by all. The pricing in every estimating program is only a guideline. The actual conditions of the loss will dictate the correct price, both for materials and labor.” (Posted March 13, 2004 at www.catadjuster.org.)
- (b) “The one thing price lists always fail to reflect is the run up in local pricing that occurs after an event like Isabel. This is usually 15-25%. So adjusters are behind the curve from the get go.” (Posted March 16, 2004 at www.catadjuster.org.)
- (c) “[I]f there is blame [about estimating software] to be put here, it may well be on the [insurance companies] themselves that dictated to the adjuster what program to use.” (Posted March 13, 2004 at www.catadjuster.org.)
- (d) “Each year we see the deterioration of the industry on a whole....NFIP [WYO insurers] are being held up in closing claims, where the [independent adjusters], like ourselve[s], have to obtain proof of losses on just about every claim. The [insureds] sometimes move like turtles and the fact the claims usually get turned around in 30 to 45 days means that we [independent adjusters] usually need to wait some 60 to 90 days after the event to see

our financial rewards from the billing.” Posted February 2, 2004 at

www.catadjuster.org.)

- (e) “USAA just kicked back an Isabel file to me for the remove/reset [sic] of a toilet in the bathroom where the wallpaper had to be replaced. I had explained in the log it was to provide access to [remove/reset] the wallpaper. The USAA reviewer comment is ‘Unless photographic evidence is provided that Rem/Reset of toilet is necessary[,] it will not be allowed.’ Have you ever seen a toilet far enough from the wall to do wallpaper[?] Me neither, and certainly not this one for sure. I’ll just re-do the estimate and short the Insured. I’m NOT revisiting the loss for photos when this kind of ignorance is involved. (Posted October 18, 2003 at www.catadjuster.org.)

36. In response to criticism from Senators representing Maryland and North Carolina, the NFIP announced in April 2004 that it would review claims presented to the agency. On information and belief, the agency sent letters to policyholders who submitted flood claims within 120 days of the hurricane informing them of this opportunity for review. NFIP’s review process, however, places the burden of seeking a review upon policyholders who have already been through months of wrangling with the WYO companies, despite ample evidence suggesting that uniformly poor methods were used in adjusting and settling these claims. Moreover, there is no indication that the NFIP review process will utilize pricing guidelines different from those used by the WYO companies or correct other deficiencies in the claims adjustment process; therefore, the NFIP process is virtually guaranteed to fall short of providing the true relief due flood victims under their insurance policies.

37. To date, nearly seven months after the storm, thousands of these claims remain unresolved. The claims files that are deemed “closed” have been settled for amounts inadequate to fund restoration of the damaged houses. As a result, thousands of the insured properties remain uninhabitable and thousands of flood victims are still living in temporary housing – FEMA trailers and other temporary shelters and rental apartments – while trying to repair and rebuild their homes.

THE CLASS REPRESENTATIVES

38. Plaintiffs, and members of the proposed Class, hold flood insurance policies issued through the NFIP by private insurance companies under the WYO program. Plaintiffs' insurance policies are identical.

Catherine Howell

39. Plaintiff Catherine Howell owns the residential property at 3683 First Avenue, Edgewater, Maryland. She purchased the property in 2000 and has continuously carried flood insurance since purchasing the property. Before Hurricane Isabel, the property had never, to her knowledge, been flooded.

40. In May 2003, Ms. Howell renewed her flood insurance policy through Indemnity Insurance Company of North America ("Indemnity") for another one year term. Under the policy, she paid an annual premium of \$849 for buildings coverage of \$180,000 (with a \$1,000 deductible).

41. On September 18, 2003 Ms. Howell's property was flooded when the storm surge of Hurricane Isabel caused the South River, a tributary of the Chesapeake Bay, to overflow its banks and the Selby Bay to rise above the shore line. The water rose to two feet inside the one-story house and completely flooded the crawl-space; the garage was filled with approximately four feet of water.

42. Ms. Howell reported the loss immediately to Indemnity.

43. In October 2003, the adjuster working for Indemnity wrote a report and proof of loss, following his inspection of Ms. Howell's house, concluding that the replacement cost value of the house was \$116,900, but that the replacement cost loss resulting from the storm was only \$41,000.

44. During the same month, the Anne Arundel County Department of Inspections and Permits inspected the property and found that the property had sustained “substantial damage,” which means that the building was damaged to the extent that the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent (50%) of the assessed value of the structure before the damage occurred. According to the County’s adjuster, the replacement cost of her house was \$103,000; discounted for depreciation, the actual cash value of the house was estimated as \$90,800. The County concluded that the structural damage to the house amounted to more than \$66,000.

45. Ms. Howell subsequently asked a general contractor to review Indemnity’s proof of loss and provide an estimate for completing the work necessary to restore the house to its pre-flood habitability. The contractor estimated that the work would cost approximately \$82,000.

5. Ms. Howell informed the adjuster of the discrepancy between his prices and those provided by her contractor but was unable to make significant progress in negotiating a fair adjustment of her claim. The report and final proof of loss submitted to Indemnity by the adjuster provided an actual cash value loss of only \$60,700.

6. Since the flood, Ms. Howell and her husband have been living in a trailer, in the front yard of her property. In January 2004, Ms. Howell signed Indemnity’s proof of loss because she needed the insurance money to proceed with demolition and construction at her house. As a result of delays in settling her insurance claim, the Howells were not able to sign contracts to rebuild their house until April 2004.

Russlyn Dodson

7. Plaintiff Russlyn Dodson owns the residential property at 3680 First Avenue, Edgewater, Maryland. She purchased the property in 2002 and has continuously carried flood insurance since purchasing the property. Before Hurricane Isabel, the property had never, to her knowledge, been flooded.

8. In December 2002, Ms. Dodson purchased her flood insurance policy through Travelers Property Casualty Corporation (“Travelers”) for a one year term. Under the policy, she paid an annual premium of \$840 for buildings coverage of \$117,000 (with a \$1,000 deductible).

46. Before Hurricane Isabel hit land, Ms. Dodson called Travelers to inquire about the coverage on her property. She was assured by a customer service representative that the property was fully insured and that any gaps in her flood insurance would be covered through her homeowners insurance policy, which was also written by Travelers.

9. On September 18, 2003 Ms. Dodson’s property was flooded when the storm surge of Hurricane Isabel caused the South River, a tributary of the Chesapeake Bay, to overflow its banks. The water rose to thirty inches inside her one-and-a-half story house.

10. In October 2003, the Anne Arundel County Department of Inspections and Permits inspected the property and found that the property had sustained “substantial damage.” According to the County’s adjuster, the actual cash value of her house was almost \$151,000 and the structural damage to the house amounted to more than \$89,000.

11. In late September and early October an adjuster working for Travelers visited the property and concluded that its actual cash value was \$115,000, that the full cost of repairs or

replacement would be \$81,500, and, ultimately, that the actual cash value loss at the property was \$69,000.

12. The County advised Ms. Dodson of various requirements of the County's floodplain management ordinance and construction codes. Under the SFIP she qualified for an additional \$30,000, to be used to elevate or otherwise flood-proof the structure. Ultimately, however, the cost of elevating and then repairing the structure greatly exceeded the payment offered by Travelers; Ms. Dodson has subsequently decided to tear down the original house and rebuild a house approximately half its size. She does not have money to rebuild the house as it was before the flood.

13. The house was uninhabitable after the storm. While coordinating demolition and reconstruction of the residence with various contractors, Ms. Dodson has been living in a rental apartment in Annapolis, Maryland. She informed Travelers that she had not been living at the house since the flood and needed to add a construction-risk rider to her existing homeowner's policy; Travelers instead canceled her homeowners insurance policy in February 2004, informing her "Our reason for canceling your Homeowners policy is the substantial change in risk since the policy was first written. You advised us that you no longer live in your home."

Kathryn Smith

14. Kathryn Smith owns the residential property at 6802 Gundar Avenue, Middle River, Maryland. She purchased the property in 2000 and has continuously carried flood insurance since purchasing the property. Before Hurricane Isabel, the property had never, to her knowledge, been flooded.

47. In September 2003, Mrs. Smith renewed her flood insurance policy through USAA General Indemnity Company (“USAA”) for another one year term. Under the policy, she paid an annual premium of \$940 for building coverage of \$250,000 (with a \$500 deductible).

48. On September 19, 2003 Mrs. Smith’s property was flooded when the storm surge of Hurricane Isabel caused the Chesapeake Bay to rise well above the shore line. The water rose to four feet around the exterior of the house and to eighteen inches inside the one-story house.

49. Mrs. Smith reported the loss immediately to USAA.

50. In October 2003, the Baltimore County Department of Permits and Development Management inspected the property and concluded that the house had sustained “substantial damage.” According to the County’s adjuster, the estimated cost of repairing the house exceeded fifty percent of the assessed value appearing in the County’s tax records. To bring the house into compliance with County flood regulations, the house would need to be elevated.

15. Shortly thereafter, the adjuster working for USAA wrote a report and proof of loss, concluding that the actual cash value of the house was \$200,000 and that the replacement cost loss resulting from the storm was \$105,100.

16. Mrs. Smith subsequently asked an engineer to determine whether the house could be elevated, as required by the local regulations. The engineer concluded that the house could not be elevated because the core construction of the house is masonry. Her options for complying with the elevation requirement, then, were to gut the existing house and use the shell as the foundation for a new one-story house or to tear the house down entirely and rebuild. A local contractor estimated that these construction plans would cost between \$195,000 and \$215,000.

51. Mrs. Smith informed USAA of the discrepancy between its proof of loss and the estimates provided by her contractor but was unable to make significant progress in negotiating a fair adjustment of her claim. USAA would not agree to pay any more than \$105,100 for damage to the house and \$30,000 for regulatory compliance costs. Further, USAA encouraged Mrs. Smith to dispute the County's finding of substantial damage and avoid the costs of complying with the County's floodplain management code, even though the NFIP contemplates local floodplain management rules and flood insurance working in combination to minimize flood losses.

17. Mrs. Smith signed the proof of loss prepared by USAA's agent in December 2003. Work at the property, however, has been stalled as the Smiths do not have the money to rebuild. Since the flood, Mrs. Smith and her husband have been living with her mother in the neighboring town of Aberdeen, Maryland. The Smiths' son, who has Asperger's Syndrome and lived with his parents before Hurricane Isabel, is living with Mrs. Smith's sister.

Frederick Kotrla

18. Plaintiff Frederick Kotrla owns the residential property at 2822 Bay Drive, Baltimore, Maryland. He purchased the property in 1999 and has continuously carried flood insurance since purchasing the property. Before Hurricane Isabel, the property had never, to his knowledge, been flooded.

52. In August 2003, Mr. Kotrla renewed his flood insurance policy through Harleysville Mutual Insurance Company ("Harleysville") for another one year term. Under the policy, he paid an annual premium of \$1,384 for buildings coverage of \$197,000 (with a \$1,000 deductible) and contents coverage of \$100,000 (with a \$1,000 deductible).

53. On September 19, 2003 Mr. Kotrla's property was flooded when the storm surge created by Hurricane Isabel caused the Back River to overflow its banks and the Chesapeake Bay to rise well above the shore line. Water rose to three feet inside his one-story house.

54. Mr. Kotrla reported the loss immediately to Harleysville.

55. In October 2003, the Baltimore County Department of Permits and Development Management inspected the property and concluded that the house had sustained "substantial damage." According to the County's adjuster, the estimated cost of repairing the house exceeded fifty percent of the assessed value appearing in the County's tax records. To bring the house into compliance with County flood regulations, the house would need to be elevated.

19. During October and November 2003, an adjuster working for Harleysville inspected the property and wrote a report and proof of loss, concluding that the full replacement cost value of the house was \$179,300, but that the replacement cost loss resulting from the storm was only \$72,100.

56. At the same time that the adjuster was preparing his proof of loss, Mr. Kotrla asked a local general contractor to inspect the property and prepare a bid for the work necessary to restore the house to its pre-flood condition. The contractor estimated that the work would cost approximately \$117,700.

20. Mr. Kotrla informed the adjuster of the discrepancy between his prices and those provided by his contractor but was unable to make significant progress in negotiating a fair adjustment of his claim. The final proof of loss submitted to Harleysville by the adjuster provided a replacement cost loss of only \$75,500.

21. Mr. Kotrla was told that he needed to sign and submit the proof of loss prepared by the company's agent. Therefore he signed Harleysville's proof of loss in November 2003.

57. In 2003, Mr. Kotrla received two partial payments from Harleysville on his claim for damage to the house: \$10,000 in September 2003 and \$52,700 in December. These amounts, together, represent the actual cash value of his loss, according to Harleysville. Harleysville withheld an amount representing depreciation from his replacement cost loss, approximately \$10,200, and told him that the depreciation could be recovered by applying for a supplemental payment when the restoration of the house was completed.

58. In March 2004, Harleysville sent Mr. Kotrla a partial payment of \$15,000 to cover his regulatory compliance costs; he was told the remainder would be released after an inspection certifying that the house had met the regulatory requirements.

59. In March 2004, Harleysville informed Mr. Kotrla that the time for seeking his recoverable depreciation had expired, and that he could not receive the \$10,200 supplemental payment promised. NFIP subsequently held that Harleysville's decision was inconsistent with NFIP regulations (including the terms of the SFIP) and made the \$10,200 payment.

60. After collecting all of the bids associated with the regulatory compliance and restoration of his house, Mr. Kotrla learned that the cash provided under his insurance policy – a total of approximately \$105,000 – would fund only half of the work needed. He expects to pay approximately \$70,000 to elevate the house and at least \$120,000 to then restore the structure to its pre-flood condition. However, he has been offered nothing close to his policy limit of \$200,000 on his claim for payment to restore the structure. Since his insurance proceeds are inadequate, the construction

is being staged and Mr. Kotrla is currently seeking a construction loan through an emergency fund established by the Maryland legislature specifically to help the victims of Hurricane Isabel.

61. Since the flood, Mr. Kotrla and his wife have been living in a 32-foot travel trailer supplied by FEMA, which is parked in the road that runs along his property. The trailer was not intended for residential living; it is cramped and cold and the plumbing frequently backs up. The Kotrlas expect to live there well into autumn, when construction should be completed.

Robert Valentin

22. Plaintiff Robert Valentin owns the residential property at 6916 Gunder Avenue, Baltimore, Maryland. He purchased the property in 1987 and has continuously carried flood insurance since purchasing the property. Before Hurricane Isabel, the property had never, to his knowledge, been flooded.

62. In October 2002, Mr. Valentin renewed his flood insurance policy through Selective Insurance Company of Southeast (“Selective”) for another one year term. Under the policy, he paid an annual premium of \$916 for buildings coverage of \$177,500 (with a \$500 deductible).

63. On September 19, 2003 Mr. Valentin’s property was flooded when the storm surge of Hurricane Isabel caused the Chesapeake Bay to rise well above the shore line. The water rose to four feet inside his one story house.

64. Mr. Valentin reported the loss immediately to Selective. An adjuster inspected the property in October.

65. On October 10, 2003, the Baltimore County Department of Permits and Development Management inspected the property and concluded that the house had sustained

“substantial damage.” According to the County’s adjuster, the estimated cost of repairing the house exceeded fifty percent of the assessed value appearing in the County’s tax records. To bring the house into compliance with County flood regulations, the house would need to be elevated.

66. Mr. Valentin asked a general contractor to inspect his property and estimate the cost of repairing the flood damage and complying with the County’s floodplain management requirements. After receiving reports from a structural engineer and a firm that specializes in raising houses, the contractor concluded that the cost to repair the flood damage and elevate the structure would exceed the value of the house and therefore recommended tearing down the house and rebuilding.

23. In December, the Selective adjuster completed his report and proof of loss, concluding that the full replacement value of the house was \$216,000, but that the actual cash value loss resulting from the storm, discounted for depreciation, was only \$71,300.

24. Mr. Valentin informed Selective of the discrepancy between its estimate of his repair and replacement costs and those provided by his contractor but was unable to make significant progress in negotiating a fair adjustment of his claim. Between December and March, Selective sent him three more reports and proofs of loss. The first of these revised reports, dated February 11, 2004, offered substantially less, finding an actual cash value loss of only \$50,500. The last report and proof of loss, sent to Mr. Valentin on March 22, 2004, set the actual cash value loss at \$61,000.

67. Selective refused to make any payment, even a partial payment, on his claim until he signed and filed a proof of loss prepared by the company’s agent. While waiting for resolution of his insurance claim, Mr. Valentin applied for, and obtained a loan from the Small Business Administration. He used this money to begin demolition and rebuilding at the property.

25. Since the flood, Mr. Valentin has been living with his wife, two sons and family pets in his garage.

Henry Hale

68. Plaintiff Henry Hale owns the residential property at 200-200A Bank Street, Oxford, Maryland. He purchased the property in 2002 and has continuously carried flood insurance since purchasing the property. Before Hurricane Isabel, the property had never, to his knowledge, been flooded.

69. In July 2003, Mr. Hale renewed his flood insurance policy through Omaha Property and Casualty (“Omaha”) for another one year term. Under the policy, he paid an annual premium of \$785 for buildings coverage of \$105,000 (with a \$1,000 deductible).

70. On September 18, 2003 Mr. Hale’s property was flooded when the storm surge of Hurricane Isabel caused the Choptank River, a tributary of the Chesapeake Bay, to overflow its banks. The water rose to eighteen inches feet inside the one-story house.

71. Mr. Hale reported the loss immediately to Omaha.

72. In September 2003, a local home inspector inspected the Hale property and concluded that water pressure caused by Hurricane Isabel had compromised the structural integrity of the house and that the cost of repairing the flood damage might exceed the cost of replacing the house.

73. A local contractor visiting the property in late September estimated that rehabilitating the house would cost approximately \$139,000.

74. In November 2003, the adjuster working for Omaha wrote a report and proof of loss, following his inspection of Mr. Hale's house, concluding that the replacement cost value of the house was \$93,100 and that the replacement cost loss resulting from the storm was only \$51,200.

26. Mr. Hale subsequently asked a local general contractor to review Omaha's proof of loss and provide an estimate for completing the work necessary to restore the house to its pre-flood habitability. The contractor reviewed Omaha's proof of loss and submitted an estimate for the same work, line by line, that totaled \$80,100.

75. Mr. Hale informed the adjuster of the discrepancy between his prices and those provided by his contractor but was unable to make significant progress in negotiating a fair adjustment of his claim. The report and final proof of loss submitted to Omaha by the adjuster provided an actual cash value loss of \$58,900.

76. In April 2004 the Talbot County Department of Planning and Zoning recommended that the house be demolished instead of rehabilitated.

27. Since the flood, Mr. Hale has been living in a FEMA-supplied trailer, in the front yard of his property. Omaha refused to make any payment, even a partial payment, on his claim until he signed and filed a proof of loss prepared by the company's agent. Approximately 180 days elapsed between the time that he reported the flood loss and the day his insurer paid any policy benefits to him. As a result, no work was undertaken at the property until April 2004.

Wayne Blackmon

28. Plaintiff Wayne Blackmon owns the residential property at 3841 Bay Drive, Baltimore, Maryland. He purchased the property in 1992 and has continuously carried flood insurance on the property since purchasing the property

77. In March 2003, Mr. Blackmon renewed his flood insurance policy through State Farm Insurance Companies (“State Farm”) for another one year term. Under the policy, he paid an annual premium of \$1,135 for buildings coverage of \$226,400 (with a \$1,000 deductible) and contents coverage of \$29,000 (with a \$1,000 deductible).

78. On September 19, 2003, Mr. Blackmon’s property was flooded when the storm surge of Hurricane Isabel caused the Chesapeake Bay to rise well above the shore line. The water rose as high as four feet in parts of his split-level house.

79. Mr. Blackmon reported the loss immediately to State Farm.

80. In October 2003, the Baltimore County Department of Permits and Development Management inspected the property and concluded that the house had sustained “substantial damage.” According to the County’s adjuster, the estimated cost of repairing the house exceeded fifty percent of the assessed value appearing in the County’s tax records. To bring the house into compliance with County flood regulations, the house would need to be elevated.

81. While State Farm was preparing its proof of loss, Mr. Blackmon asked two general contractors to submit bids for the work necessary to restore the house to its pre-flood condition. One contractor, recommended by State Farm, estimated that the work would cost approximately \$113,800. The other, a reputable local firm, estimated that the work would cost approximately \$155,000.

29. In late October, the adjuster working for State Farm wrote a report concluding that the replacement cost loss resulting from the storm was \$59,800. Shortly thereafter, the replacement cost loss was revised and stated as \$70,910.

30. In November, Mr. Blackmon received a report from a structural engineer summarizing the structural damage caused by the flood. Around the same time, he also received an estimate addressing the feasibility and cost of elevating the house; according to the estimate only part of the structure could be lifted, and doing so would cost approximately \$14,500. The remainder of the house would have to be demolished and re-built in compliance with the local flood code. Mr. Blackmon received a bid from this contractor for all of the work needed to bring the structure into compliance with local floodplain management regulations and restore the structure to its pre-flood condition. The total for all work was approximately \$187,400.

31. Mr. Blackmon informed the adjuster of the discrepancy between his prices and those provided by the contractor but was unable to make significant progress in negotiating a fair adjustment of his claim. In November, State Farm accepted Mr. Blackmon's request for payment of \$30,000, allowed under the policy, to comply with the County's floodplain management regulations. In December 2003, State Farm asked Mr. Blackmon to approve a report and final proof of loss stating the replacement value of the house as \$130,000 and the replacement cost loss as \$88,400.

82. In April 2004, Mr. Blackmon submitted a contractor estimate for replacing the heating and air-conditioning in the house; the estimate was significantly higher than the line-item estimated by State Farm's adjuster. State Farm therefore agreed to revise its proof of loss to cover the

cost of this particular replacement. The company stated the revised replacement cost of Mr. Blackmon's covered damages as \$100,200.

32. After the flood, FEMA provided a travel trailer. Mr. Blackmon and his wife lived in the trailer briefly, but abandoned it after a few weeks because of problems with the heat supply and running water. Since that time, the Blackmons have been splitting their time between the houses of their son and daughter.

CLASS ACTION ALLEGATIONS

33. Plaintiffs bring this action against Defendants under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

34. The Class is defined as all persons who held flood insurance policies issued by WYO insurers and filed a claim under the Standard Flood Insurance Policy, as a result of damage from Hurricane Isabel, that was settled for an amount below the policy limits.

35. The Class is so numerous that joinder of all members is impracticable. Plaintiffs do not know the exact number of Class members falling within the proposed definition, but that information is in the possession of the Defendants. However, on information and belief, Plaintiffs allege that the number of the Class numbers in the tens of thousands and that the members of the Class reside in several states, making joinder impracticable.

36. Common questions of law exist as to all members of the Class and predominate over any questions solely affecting individual Class members. Specifically:

- (a) Whether members of the Class may claim the same rights and benefits under their insurance policies, regardless of the issuer.

- (b) Whether Defendants construed policy terms to deny coverage within policy limits to their insureds.
- (c) Whether Defendants used pricing guidelines or construction estimating software that did not accurately reflect costs of material and labor necessary to repair flood damaged houses.
- (d) Whether Defendants failed to communicate accurate and timely information to their insureds about filing proofs of loss to support their insurance claims.
- (e) Whether members of the Class have been injured by Defendants' conduct and are entitled to damages, restitution or disgorgement.

37. Plaintiffs' claims are typical of the claims of the other members of the Class because all claims arise from the charges that Defendants failed to honor rights and provide benefits promised under the SFIP, in breach of contract.

38. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiffs have no interests that are antagonistic to those of the other members of the Class, have retained counsel experienced in class action and complex consumer litigation, and intend to prosecute this action vigorously.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Plaintiffs and the members of the Class are claiming amounts ranging from thousands to tens of thousands of dollars. Since the expense of litigating these claims on an individual basis would dwarf the recovery any individual Class member would claim, it is unlikely that a significant number of individual actions will be brought. Further, adjudicating these claims in one proceeding would use fewer judicial resources than presenting the same issues for resolution in multiple actions.

40. The common issues presented will predominate over individual questions.

COUNT I

BREACH OF CONTRACT

(under federal common law for breach of express terms)

41. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

42. Under the express terms of the SFIP, the policyholder is entitled to the replacement cost of all flood damage losses, up to the policy limits. By their conduct, including the use of faulty numbers to calculate replacement costs and failure to include certain covered losses, Defendants deprived Plaintiffs of this benefit, in breach of contract.

43. As a result of Defendants' breach, Plaintiffs suffered damages in the form of economic losses.

44. Plaintiffs and the Class are therefore entitled to all damages caused by such breach of contract, including consequential damages, incidental damages, and costs incurred.

COUNT II

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(under federal common law)

45. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

46. Under the implied covenant of good faith and fair dealing, Plaintiffs are entitled to reap the benefits of the contract without interference by Defendants. Defendants interfered with Plaintiffs' ability to exercise their rights under the contract in at least three ways: first, by failing to communicate the enlargement of the time for filing a claim under the policy; second, by incorrectly advising policyholders that they were required to sign the adjuster's proof of loss

in order to receive any benefits under the policy; and third, by implementing a compensation scheme that gives rise to an inherent conflict of interest between the adjusters, whose services were policyholders under the contract, and the policyholders. These types of interference, *inter alia*, constitute a breach of the implied covenants created under the contract.

47. As a result of Defendants' breach, Plaintiffs and members of the Class suffered damages in the form of economic losses.

48. Plaintiffs and members of the Class are therefore entitled to all damages caused by such breach of implied covenants, including consequential damages, incidental damages, and costs incurred.

COUNT III

BREACH OF FIDUCIARY DUTY (under federal common law)

49. Plaintiffs incorporate by reference and reallege all paragraphs previously alleged herein.

50. Defendants, through their agents, undertook review of the insurance coverage and needs of, and to provide advice and counsel to, existing and prospective policyholders regarding what would be in the policyholder's best interest with respect to the acquisition of insurance.

51. Defendants and their agents possess specialized skills and knowledge superior to that of Plaintiffs and members of the Class concerning the terms and limits of the SFIP. The relationship between Defendants, by and through their agents, and Plaintiffs and Class members, was structured and intended to repose confidence and trust in the Defendants and their handling of flood insurance claims.

52. Defendants, by and through their agents, knew or should have known that Plaintiffs and the Class members placed this confidence and trust in them, and Defendants, by and through their agents, accepted the confidence and trust reposed in them by Plaintiff and Class members.

53. Plaintiffs and members of the Class generally had no prior training or expertise concerning flood insurance, and relied upon the advice of Defendants in settling their insurance claims.

54. As a result of the circumstances described above, Defendants had a fiduciary relationship with and responsibility to Plaintiffs and Class members and owed them the highest obligations of candor, full disclosure, good faith, loyalty, fair dealing and trust. Defendants breached their fiduciary duties and acted with gross, reckless and intentional disregard of the injury and risk of loss they inflicted upon Plaintiffs and members of the Class.

137. Plaintiffs and members of the Class are therefore entitled to all damages caused by such breach of fiduciary duties, including consequential damages, incidental damages, and costs incurred.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray this Court for judgment as follows:

A. Declaring this action to be a proper class action, with the Plaintiffs as class representatives and their counsel as class counsel;

B. Awarding injunctive relief requiring Defendants to review and recalculate all claims using material and labor pricing data that accurately reflect the costs of repairing and replacing all flood damage to properties owned by Plaintiffs and members of the Class;

C. Restitution of all premiums paid by Plaintiffs and members of the Class for policies in force during September 2003;

D. Disgorgement by Defendants of all profits and compensation paid to Defendants for issuing and servicing the Plaintiffs' and Class members' insurance policies;

E. Awarding damages against the Defendants, in favor of Plaintiffs and the Class, for all damages incurred by Plaintiffs and the class as a result of Defendants' breach of contract;

F Awarding Plaintiffs and the Class pre-judgment and post-judgment interest on their damages; and

G. Awarding such other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: May 10, 2004

Respectfully submitted,

**COHEN MILSTEIN HAUSFELD
& TOLL, P.L.L.C.**

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