



Consumer Federation of America

November 6, 2012

Office of Governor Chris Christie
125 West State Street
P.O. Box 001
Trenton, New Jersey 08625

RE: Preventing Unauthorized Percentage of Replacement Cost Deductibles and Denial of Claims based on Anti-Concurrent Causation Clauses

Dear Governor Christie:

I am writing from the Consumer Federation of America, an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education, to thank you for protecting consumers from having to bear hurricane deductibles in your jurisdiction. As you know, wind claims from designated hurricane activity are subject to considerably higher deductibles than standard, flat rate deductible claims. Your decision to protect consumers from hurricane deductibles will result in millions of dollars in savings and will ensure that much-needed resources will remain with homeowners during the recovery in following weeks and months.

We encourage you to work closely with your state's insurance department to ensure that your determination is implemented and homeowners are only charged the lower, flat rate deductible applicable to their claim, rather than the much higher percent of replacement cost deductible associated with hurricane coverage. Many insurers do not explicitly define the percentage of a replacement cost deductible as a "hurricane" deductible. Rather, they use terms such as "wind speed" or other nomenclature.

In addition, we encourage you and your insurance department to be aware of anti-concurrent-causation clauses that could result in an increased number of homeowners seeing their legitimate claims denied by insurance companies.

A typical anti-concurrent causation (ACC) clause might read, "[w]e will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss." The list almost always includes flooding as an exclusion. Different insurers have different formulations of the clause in place in their policies. The ACC clause was intended to limit the insurer's liability when a covered risk damages a structure at about the same time as an excluded risk, regardless of the order of such events. After Hurricane Katrina, courts were asked to determine whether the insurance companies' language supersedes the common law doctrine of proximate cause. While many of the courts ruled that insurance companies could, in fact, use ACC clauses to avoid the common law rule of proximate cause, others found the clause too ambiguous, ruled the other way.

CFA calls on you to block application of this clause for victims of the winds and floods of Sandy in your state.

Please feel free to contact the Consumer Federation of America with any questions and thank you for taking these important steps to protect consumers.

A handwritten signature in black ink that reads "J. Robert Hunter". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Robert Hunter
Director of Insurance
Consumer Federation of America