

"Federation Corner" column
The Montgomery Sentinel - November 2, 2006

Insurance fraud is perpetuated by FEMA and its insurance industry partners

by Wayne Goldstein
MCCF President

Hurricane Isabel hit Maryland as a tropical storm on 9/19/03, killing eight state residents, and causing nearly a half billion dollars in damage. Baltimore's Inner Harbor and Fells Point were extensively flooded, Annapolis experienced the largest storm surge in its history, and the Chesapeake Bay Bridge completely closed for the first time ever. Many in Montgomery County lost power for a week. Both the western and eastern shores of the Chesapeake Bay suffered from flooding. One flood victim was Steve Kanstoroom. Like millions of people who live in areas that can flood, he had bought a policy through the National Flood Insurance Program (NFIP), a cooperative arrangement between the Federal Emergency Management Agency (FEMA) and the private insurance industry, where the industry takes a third of the profit and bears no underwriting risk.

However, Kanstoroom became a victim for a second time when he tried to file a claim on his flood insurance policy. He fought back, mastering the intricacies of the policy and the national program. He received his full policy limits and then spent the next three years trying to help his neighbors and others across the country do the same. Some in Maryland remain in trailers after three years because FEMA's insurance company partners refuse to pay their claims in full, to the limit of the policy. As a result, many flood victims do not have enough money to restore or rebuild their flood-ravaged homes.

Kanstoroom learned that insurance agents were being trained to tell policyholders they would be restored to their pre-loss condition, while at the same time, claims adjusters were being trained to allow only narrowly defined coverage in limited amounts, including substituting new construction pricing for much costlier repair and renovation pricing. Soon after, ABC News reported that the Maryland Insurance Commissioner found, "FEMA adjusters systematically low-balled the losses of thousands of Maryland victims."

On October 9, MCCF gave Kanstoroom its Community Hero Award. MCCF was also authorized to present a Governor's citation at the same time, which concluded with: "You serve as a true inspiration to others." My closing remarks upon presenting these awards were: "Thanks to Steve, the Federal and State governments are looking more closely at what's very wrong with the nation's flood insurance program, particularly the egregiously bad behavior of many of the nation's largest property and casualty insurance companies."

Kanstoroom used the award ceremony as an opportunity to request that MCCF write a letter to the Governor asking him to ask the President to make two policy statements about FEMA, a request we unanimously supported. I also went to a rally in Annapolis last week for Maryland flood insurance victims to read the letter. The first policy statement is inspired by a multi-plaintiff lawsuit of flood insurance victims whom Kanstoroom has helped. The suit is based upon his investigation and alleges fraud on a massive scale. A federal judge recently ruled in the lawsuit that he believes Congress intended to shield private insurance companies who participate in the NFIP from any consequences related to their intentional bad acts. The first policy statement would say just the opposite.

It defies common sense that any person or any industry would be protected from deliberate unlawful behavior. Not even soldiers in wartime have such protections. However, I found this in a 2004 FEMA insurance adjusters training manual: "Federal law governs. This policy is not subject to state departments of insurance or state and local courts." Apparently, FEMA also believes that federal law intends that its

policies and the behavior of its insurance company partners under the NFIP is not even subject to the federal courts.

The second statement concerns FEMA's claim that it can also change its policies at will without going through the formal rulemaking process that every other federal, state, and local government agency in this country must follow. Thus, it could also unilaterally and secretly decide that the behavior of its insurance company partners under the NFIP is not subject to the federal courts. Once the President were to issue these two policy statements indicating that FEMA and its insurance partners are as accountable for their actions as the rest of us, then the next step would be to persuade the Maryland congressional delegation to introduce emergency legislation to make these unambiguous policy statements federal law.

This could have been a Montgomery County issue this past summer if the Lake Needwood Dam had failed. It could affect county residents who make Florida and other places their primary residence. In some instances, homeowners must buy flood insurance in order to obtain a mortgage. FEMA and its insurance company partners continue to market flood insurance as protection and peace of mind. Just last week, on 10/26/06: "Flood Insurance Is Best Assurance. NFIP Policy Protects Against Costly Damages... Flood insurance is easy to obtain. Most insurance agents sell National Flood Insurance Program (NFIP) policies... You can get flood insurance in most communities nationwide, whether you live in or outside a floodplain. You can get flood insurance if your house has been flooded before, and you can purchase it even if your mortgage does not require it. Flood insurance is available in all zones (low, moderate and high risk), with significant cost savings for people in low-to-moderate risk areas."

The governor and the Maryland Insurance Commissioner have been asked to alert Marylanders to the false sense of security that flood insurance offers. Unlike homeowners insurance, the Maryland Insurance Administration has no authority to regulate flood insurance, even though it is sold by the same carriers that sell homeowners insurance. Due to the recent court decision, policyholders have no judicial rights to seek damages for wrongful conduct that relate to the policy sales or settling of damage claims. Until our Governor, the President, and Congress take decisive action to subject FEMA and its insurance company partners to the rule of law, it is Buyer Beware for the NFIP.