

NATURAL DISASTERS, ACCESS TO JUSTICE, AND LEGAL SERVICES

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CONTENTS

INTRODUCTION	1	R
I. SRU ORIGIN AND STRUCTURE	3	R
A. <i>SRU Components</i>	4	R
B. <i>Legal Issues</i>	5	R
1. Federal Assistance: FEMA and SBA.....	6	R
2. Private Insurance (Homeowner’s and Flood Insurance)	11	R
C. <i>Levels of Assistance</i>	17	R
D. <i>Expanded Client Populations</i>	18	R
II. CASE STUDIES	19	R
A. <i>Client A—FEMA Home Repair and Basement Living Areas</i>	19	R
B. <i>Client B—Displaced Renter Affected by New Zoning and Flood Elevation Regulations</i>	24	R
C. <i>Client C—SRU’s Holistic Approach to Assistance</i>	27	R
CONCLUSION: AN ONGOING RECOVERY.....	30	R

INTRODUCTION

When the high winds and floodwaters from Hurricane Sandy began to subside on October 30, 2012, the New York City metropolitan area was left facing an unprecedented level of destruction.¹ The immediate aftermath of a natural disaster like Sandy² com-

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¹ See, e.g., ERIC S. BLAKE ET AL., NAT’L HURRICANE CTR., TROPICAL CYCLONE REPORT: HURRICANE SANDY (2013), *available at* http://www.nhc.noaa.gov/data/tcr/AL182012_Sandy.pdf.

² As many know, even deciding what to call Sandy has legal consequences. The Federal Emergency Management Agency (FEMA) Individual Household Program (IHP) administrators generally refer to Sandy as “Hurricane Sandy.” E.g., FEMA, HURRICANE SANDY RECOVERY EFFORTS ONE YEAR LATER (n.d.), *available at* http://www.fema.gov/media-library-data/1382967173777-7411aa1b6d729a8a97e84dbba62083d8/FEMA+Sandy+One+Year+Fact+Sheet_508.pdf. However, for homeowner’s insurance policyholders with special, higher-dollar hurricane deductibles in their policies, Sandy is Superstorm Sandy, an executive determination made by New York State Governor

pounds the structural problems of the inadequate provision of legal services to marginalized communities.³ How should legal services providers reorganize their limited resources to respond to sudden catastrophe?

This Article describes the response of the New York Legal Assistance Group (NYLAG) to the post-disaster access to justice emergency following Hurricane Sandy.⁴ Part I describes the structure and focus of NYLAG's Storm Response Unit (SRU), a unit born out of NYLAG's efforts to assist storm victims. Part II presents client stories to illustrate the interplay of post-disaster legal issues. Part III concludes by noting the significant benefits found in a dedicated, comprehensive legal services project as a response to natural disas-

Andrew M. Cuomo, among other state executives (and under somewhat dubious legal authority). See Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces Homeowners Will Not Have to Pay Hurricane Deductibles (October 31, 2012), available at <http://www.governor.ny.gov/press/10312012Hurricane-Deductibles>. Administrators in FEMA's National Flood Insurance Program (NFIP) avoid the issue by referring to Sandy as a "meteorological event." E.g., JAMES A. SADLER, FEMA, W-12115, METEOROLOGICAL EVENT SANDY – FLOOD DAMAGED CONTENTS CLAIM GUIDANCE (Dec. 19, 2012), available at <http://bsa.nfipstat.fema.gov/wyobull/2012/w-12115.pdf>. The authors will generally refer to the storm simply as "Sandy." It should also be noted that while the focus of this Article is on Sandy and the legal needs that arise with natural disasters, many programs and issues discussed in this Article are relevant for other types of disasters. For that reason, *natural disaster* and *disaster* are often used in this Article interchangeably.

³ Each year, more than 2.3 million low-income New Yorkers navigate the State's legal system without assistance of counsel. TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2012), available at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf. Even before Hurricane Sandy, at best only 20% of the legal needs of low-income New Yorkers were being met. *Id.* In 2010, Chief Judge Lippman's Task Force found that 99% of tenants are unrepresented in eviction cases in New York City; 98% are unrepresented outside of the City; 99% of borrowers are unrepresented in hundreds of thousands of consumer credit cases filed each year in New York City; 97% of parents are unrepresented in child support matters in New York City, 95% are unrepresented in the rest of the state; and 44% of homeowners are unrepresented in foreclosure cases throughout our state. Overall, 70% of civil matters in New York State courts involve family law, consumer credit, landlord-tenant, and foreclosure cases. TASK FORCE TO EXPAND ACCESS TO CIVIL LEGAL SERVICES IN NEW YORK, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK 1 (2010), available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

⁴ NYLAG's Storm Response Unit was one among many legal services providers in the New York City Metropolitan Area assisting Sandy victims in critical relief efforts. This community of legal services providers included Brooklyn Jubilee, Law Help New York, The Legal Aid Society, Legal Services of New York, Touro Law Center's Disaster Relief Clinic, MFY Legal Services, New York City Bar Justice Center, South Brooklyn Legal Services, Staten Island Legal Services, Pro Bono Net, the City Bar Justice Center (an affiliate of the New York City Bar Association), Make the Road New York, and Volunteer Lawyers for Justice of New Jersey.

ters. We also hope this Article will serve as a partial compendium of legal and non-legal resources, federal law and policy, and practice tips for advocates who are confronted with the sudden mass of urgent, complex, and intertwined claims for assistance that natural disaster victims bring.

I. SRU ORIGIN AND STRUCTURE

NYLAG is a private, independent public-interest law firm that provides comprehensive civil legal services to low-income New Yorkers. In the immediate aftermath of Sandy, NYLAG, as with many other legal services providers, was displaced from its offices and forced to set up temporary offices in various law firms and community partners' offices across Manhattan, creating another level of logistical challenges in organizing and deploying disaster legal assistance.⁵ Despite this, it set about creating SRU from the premise that disaster victims comprise a diverse client population—diverse across socioeconomic and demographic lines, and diverse in the wide variety of legal issues they present. There is no “one size fits all” approach for providing legal assistance in such circumstances. Recognizing this, NYLAG established a comprehensive legal services unit. NYLAG also established multiple points of entry for storm victims. The goal of this arrangement was and is creating flexibility in meeting clients and responding to their needs, and to efficiently provide varying levels of assistance across several distinct legal issue areas.

Thus NYLAG, despite itself being displaced from its offices in lower Manhattan by Sandy's storm surge, was able to establish a presence among affected areas. This was vital not only to reaching as many disaster victims as possible, but also to allowing SRU to develop an early familiarity with the types of factual scenarios and legal problems facing disaster victims. For example, New York City storm victims were eligible for a very short-term temporary food assistance program. The program was designed for victims who were not already eligible for Supplemental Nutrition Assistance Program (SNAP) benefits (commonly known as food stamps).⁶ NYLAG learned through its partnerships with community organizations that the City's Human Resources Administration (HRA) only

⁵ NYLAG was displaced for over two months, returning to its offices in mid-January 2013.

⁶ The temporary disaster program is also known as D-SNAP. See U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV., *DISASTER SNAP GUIDANCE* (2013), available at http://www.fns.usda.gov/disasters/response/D-SNAP_Handbook/D-SNAP_Handbook.pdf.

arranged for two application centers, neither of which was convenient to the hardest-hit areas. In response, NYLAG staff and volunteers developed informational flyers for Sandy victims and canvassed Far Rockaway, Coney Island, and parts of Staten Island to spread the word about the temporary food assistance program.⁷

A. *SRU Components*

NYLAG did not have a Storm Response Unit before Sandy. NYLAG's initial response efforts consisted of staff members volunteering to help disaster victims while still being responsible for their own full caseloads. Staff members from other units volunteered after work hours and during weekends to begin providing disaster legal services in the immediate aftermath. NYLAG's early presence on the ground also allowed it to organize the efforts of dozens of volunteers, including pro bono attorneys and law students. Within a very short time, however, NYLAG leadership determined that the long-term recovery needs of Sandy victims would require a dedicated, multi-issue legal services project. The new Storm Response Unit brought together experienced NYLAG attorneys and expanded under their leadership with vital support from the Robin Hood Foundation, the UJA Federation, and several other private donors.⁸

In the early days after Sandy, NYLAG established its Storm Help Hotline to field legal questions from storm victims across the five boroughs of New York City, as well as Nassau and Suffolk Counties on Long Island. NYLAG sent attorneys to impacted communities around New York City and Long Island to meet clients in person at FEMA disaster relief centers. NYLAG drew on its close relationships with social service providers and community organizations to set up more than twenty legal clinics in many of the hardest-hit neighborhoods, including Far Rockaway, Coney Island, Long Beach, Brighton Beach, and Freeport. It also deployed the Mobile Legal Help Center, a law office and courtroom on wheels, to allow staff and volunteer attorneys to meet directly with clients in devastated areas that often lacked sufficient infrastructure to host storm relief clinics.⁹

⁷ See *Spreading the Word, One Flyer at a Time*, NYLAG (Dec. 20, 2012), <http://nylag.org/news/2012/12/spreading-the-word-one-flyer-at-a-time/>.

⁸ See Press Release, New York Legal Assistance Group, An Unprecedented Storm Response (Jan. 10, 2013), <http://nylag.org/news/2013/01/an-unprecedented-storm-response>.

⁹ This courtroom on wheels enabled attorneys to provide counseling, advice, and direct representation to clients without leaving the vehicle. A video link with the

The legal consultations NYLAG conducted in the first weeks after Sandy often addressed basic questions about recovery programs' procedures and eligibility requirements. For some Sandy victims, this was enough help for them to navigate the recovery on their own. It was immediately clear, however, that many clients required ongoing assistance and eventually representation to resolve their post-disaster legal issues. Thus, many of the temporary legal clinics evolved into long-standing legal consultation sites. This proved particularly useful to connect with potential clients who had evacuated before the storm and only returned to their homes weeks or months afterward. SRU's ability to meet clients closer to their homes also made for more effective attorney-client relationships by minimizing the logistical hurdles of gathering documents and scheduling phone appointments that can impede advice and counsel.

B. Legal Issues

Natural-disaster victims face a complex and shifting array of legal issues. In the early stages following a disaster, they must maneuver a confusing and, as in the case of many Sandy victims, novel set of questions about their rights, duties, and options for disaster recovery. Some legal issues are familiar to legal services advocates, such as landlord-tenant disputes, foreclosure defense, and public-benefits maintenance. Related to these issues are programs implemented specifically for disaster victims, such as the temporary food assistance and Disaster Unemployment Assistance programs.¹⁰

From its inception, SRU incorporated the broad toolkit of direct legal services advocacy. The post-disaster legal landscape, however, presented areas of law and government benefits programs not typically handled by non-profit legal services providers. In addition to handling the familiar stew of civil legal issues in the unfamiliar context of a post-disaster emergency, SRU faced a steep learning curve in new legal issues to adequately advise Sandy victims. NYLAG reached out to legal services attorneys with disaster recovery experience for substantive training on post-disaster benefits programs and experiences following Hurricane Katrina and other nat-

courts provided access to judges for emergency hearings, including domestic violence and eviction cases. *Mobile Legal Help Center*, NYLAG, <http://nylag.org/units/mobile-legal-help-center> (last visited Oct. 29, 2013).

¹⁰ See *Disaster Unemployment Assistance*, N.Y. STATE DEP'T OF LABOR, <http://www.labor.ny.gov/ui/claimantinfo/disaster-unemployment-assistance.shtm> (last updated Mar. 7, 2013).

ural disasters.¹¹ In turn, NYLAG led training programs for legal services and pro bono attorneys in the metropolitan area.¹² Advocacy for FEMA benefits, for example, required that SRU attorneys quickly familiarize themselves with not only a new set of federal rules and regulations, but also the government bureaucracy that administers the program. Just as a legal services housing attorney develops a rapport and best practices with her local public housing administration and housing court, or a public benefits advocate with local Human Resources Administration staff and administrative law judges, SRU attorneys had to learn—and learn quickly—through practice the peculiarities of advocating for their clients' appropriate disaster recovery benefits.

1. Federal Assistance: FEMA and SBA

Disaster victims may be eligible for a variety of benefits from the federal government. Generally, the most significant source of benefits for individuals following a natural disaster is FEMA's Individuals and Households Program (IHP).¹³ IHP assistance may either be direct—such as the provision of a housing unit for temporary shelter—or financial, in the form of purpose-specific grants. Financial assistance is the more common form of assistance

¹¹ Among the organizations that offered assistance and training were Southeast Louisiana Legal Services and Equal Justice Works. SRU benefited in particular from a week of firsthand training and assistance by Zachary Tusinger, an Equal Justice Works AmeriCorps Legal Fellow from Legal Aid of Western Missouri.

¹² NYLAG held its first training on post-disaster legal issues on November 9, 2012.

¹³ There is a regulatory sequence of delivery for FEMA IHP disaster benefits, according to which emergency assistance from “volunteer” (i.e., charitable) organizations and insurance contract proceeds should be provided before FEMA IHP provides rental, home repair, personal property replacement, or any other assistance. 44 C.F.R. § 206.191(d)(2) (2013). In practice, however, an insurance claim settlement may take months, if not years, and FEMA benefits can therefore be temporally interspersed with other benefits. As this Article went to print, NYLAG was still working on some FEMA IHP assistance appeals, although advocates should know that FEMA IHP representatives have stated that the eighteen-month deadline for assistance in the *Code of Federal Regulations*, 44 C.F.R. § 206.110(e), will apparently by policy be interpreted to mean that no new requests for assistance or appeals of denied requests will be considered after that deadline without a strong showing of good cause for the delay. As an initial practice tip, this means that advocates should not wait for the complete and final settlement of an insurance claim (whether for home repair, additional living expenses benefits through a homeowner's or renter's insurance policy, or any other benefits) before pursuing FEMA IHP assistance. The individual may always pay back to FEMA the benefits that have been duplicated by insurance proceeds or charity. *See id.* §§ 206.116, 206.191(a)–(d). This also means that advocates should be aware of the effect of the sequence of delivery on individuals' eligibility for benefits. Nonetheless, when strict application of the sequence of delivery regulations “would adversely affect the timely receipt of essential assistance,” out-of-order provision of services is permissible. *Id.* § 206.191(d)(4).

2013] NATURAL DISASTERS & ACCESS TO JUSTICE 7

and covers a wide variety of post-disaster expenses, such as rental assistance, home repair, personal property reimbursement, and moving and storage expenses.¹⁴ Each type of benefit has specific eligibility requirements¹⁵ or monetary limits¹⁶ that FEMA applicants might not be aware of when they register.¹⁷

Some aspects of FEMA policy regarding eligibility and monetary limits for IHP benefits are available through the FEMA Office of Chief Counsel's *Disaster Operations Legal Reference (DOLR)*, which is generally not available to the public, but should be obtainable by contacting FEMA itself.¹⁸ The *DOLR* leaves open more questions than it addresses, but it is particularly helpful in understanding Other Needs Assistance (ONA) benefits administration, the disaster declaration, and federal response processes.¹⁹ Mainly, though, FEMA IHP policy is set out in the *IHP Policies and Procedures Manual*, commonly referred to as the PPM. This internal document indicates how IHP staff members should process requests for various types of assistance in different circumstances. It also provides guidance on various related issues, such as FEMA's policies for accept-

¹⁴ *Id.* §§ 206.110, 206.117, 206.119.

¹⁵ For example, financial assistance for home repair is limited to "help return owner-occupied primary residences to a safe and sanitary living or functioning condition." *Id.* § 206.117(b)(2)(i). Thus, only when an IHP applicant can show that he or she owns a damaged property and uses that property as his or her primary residence (a term defined in the regulations) is that applicant eligible for any IHP Housing Assistance (HA) home repair funds.

¹⁶ See FEMA, *DISASTER OPERATIONS LEGAL REFERENCE* 6–62 (2011). This resource notes that

FEMA awards assistance for different types of disaster-related personal property expenses as determined by a standardized, line item list. A contractor, currently R.S. Means, provides a list that contains standardized line item costs. Thus all eligible personal property has an associated line item and price that NEMIS [National Emergency Management Information System] establishes in its administrative setup.

Id. at 6-62. These costs vary according to regional pricing variations, presumably also established by R.S. Means. For Sandy, this meant pricing differences between Long Island and New York City victims.

¹⁷ Somewhat similarly, many SRU clients reported that they were misinformed by FEMA employees that they could receive at-cost reimbursement for a given replacement or repair. While these incidences seemed to decrease over time, the authors are personally aware that such misinformation was provided by IHP staff members through May 2013.

¹⁸ SRU advocates found that the only reliable way to communicate directly with a FEMA representative was to call the FEMA Helpline. Written appeals would yield phone calls from appeals officers or email responses from general counsel staff on rare occasions.

¹⁹ The *DOLR* also has a lengthy section on Public Assistance benefits, which are available to state agencies, local governments, and certain private non-profit organizations. See 44 C.F.R. §§ 206.201, 206.202.

able evidence in certain situations. As will be discussed in subsequent sections, because FEMA generally does not provide any reasonable level of particularity in its written decision letters, advocates generally cannot cobble together any part of the PPM based on decision letters. It is only in talking with IHP staff members that one can start to understand how FEMA will interpret, or is at least supposed to interpret, a certain set of facts. And as policies evolve over time, understandings gained through benefits applications and appeals following one disaster may no longer be in place for the next disaster.

A particular challenge that SRU has faced in assisting individuals with obtaining FEMA IHP benefits is acquiring the client's IHP assistance file. A client's FEMA file is often the best source to use to evaluate a disaster victim's legal options. Federal regulations²⁰ and law²¹ allow individuals and their advocates to obtain these files, which are the only means to obtain IHP inspectors' reports of damaged residences and personal property, records of IHP staff members' contact with applicants,²² and more detailed notes of IHP actions.²³ These notes are crucial in determining the basis for a denial, since the decision letters applicants receive are merely automated form letters that are not designed to identify each missing element in an application or appeal. The IHP files are also helpful in obtaining a record of all documentation that FEMA has received from an individual, as individuals are often unable to provide a certain document months after they submitted it to FEMA or another party.²⁴ Because of these factors, obtaining an individual's

²⁰ 44 C.F.R. § 206.115(d) ("An applicant may ask for a copy of information in his or her file by writing to FEMA or the State as appropriate. If someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent him or her.").

²¹ 5 U.S.C. § 552a(d) (2012).

²² This is referred to by IHP as a "Mail Room Report – MR 01 Contact Report."

²³ This is referred to by IHP as a "Mail Room Report – MR 02 Comments Report."

²⁴ The standard cover letter that IHP sends with an assistance file contains the following verbatim list of types of documentation for inclusion in a requested file:

- A computer print-out of the FEMA Housing Inspection Report;
- Documentation concerning the application (for example: receipts submitted, computer data base [sic] print-out verifying property ownership;
- Letters previously sent to FEMA; or
- Contact Sheets. These are FEMA staff records of conversations with the application, the landlord, the employer, or representatives of insurance companies or banks.

During recent teleconferences, FEMA leadership has also stated that advocates can request a benefits issuance sheet, which will show what types of IHP awards have been issued to a client; NYLAG, however, has not been successful in obtaining this additional documentation, otherwise gathering this information by telephone.

2013] NATURAL DISASTERS & ACCESS TO JUSTICE 9

IHP assistance file is often one of the first steps an advocate needs to take in assessing the merits of a claim and his or her ability to represent that individual on that claim.

There are several hurdles advocates may face in this effort to obtain an IHP assistance file. First, FEMA does not have a file request form, so advocates must create their own. This presents a design challenge, in that advocates are frequently told by IHP representatives that FEMA did not understand the file request to be a file request, but rather some other document. A second and related challenge is that IHP will not confirm a documentation submission, and therefore advocates will only know that there is an issue (or that there is no issue) if they or the represented party contacts IHP to inquire.²⁵ A third challenge is that IHP representatives unfortunately do not seem to be consistently trained in what constitutes a valid file record request.²⁶ Most commonly, IHP representatives have told SRU that the request is in a “wrong” form or that certain unnecessary information, such as a copy of a driver license (which IHP will use as an alternate form of identity verifica-

²⁵ Experience indicates that at minimum, it is best to call IHP to confirm that it received a file request two to three business days after submitting the request, and then to check on its status and navigate any asserted issues approximately three weeks after submitting the request.

²⁶ The Department of Homeland Security, the agency within which FEMA is organized, provides regulations for processing a request for records on a U.S. citizen or lawful permanent resident. Regarding basic information, advocates and individuals should be prepared to list the applicant’s name, current address, date of birth, and place of birth. 6 C.F.R. § 5.21(d) (2013). DHS regulations give requesting parties the option to include a Social Security number to “help the identification and location of requested records,” *id.*, but it is good practice to include that information because IHP representatives verify identity in part through the last four digits of an applicant’s Social Security number. *See* FEMA, HELP AFTER A DISASTER: APPLICANT’S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM 2 (2008), available at http://www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf (noting that applicants should be prepared to provide their social security numbers when applying for disaster assistance benefits). Additionally, individuals may submit a signed and dated statement that includes the sentence “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct . . .” as a substitute for the notarized statement required under the regulation. 6 C.F.R. § 5.21(d) (imposing sworn statement requirement and noting the process under 28 U.S.C. § 1746 as an adequate substitute therefor). Furthermore, the regulation requires an individual to describe the record with enough detail to enable FEMA to locate the records with “a reasonable amount of effort.” 6 C.F.R. § 5.21(b). This means that, at minimum, FEMA should receive information on the disaster address, the FEMA IHP disaster number corresponding to the event, and a description of the documents requested (e.g., inspection reports and eligibility letters). If the individual or advocate is requesting something unusual, such as the IHP inspector’s photos, this should be specifically noted. Finally, if the advocate wants the file released to him or her directly, the request must include a statement from the applicant authorizing such. *Id.* § 5.21(f).

tion) or a notarization of the request form, is missing. While generally these problems are best resolved by referring back to FEMA's unpublished policies in the PPM or asking to speak with a supervisor—IHP representatives, in other words, are generally unmoved by references to legal authorities, such as the United States Code—it is important that advocates know the requirements and project confidence in communicating those requirements to IHP representatives.

Additionally, it is important to know what FEMA will generally *not* release with assistance files. IHP inspection photos, which may in some cases be the only photos of home and personal property damage that exist and are likely some of the best-quality visual documentation of losses, will usually not be released by FEMA. A written list of payments made to an applicant will not be provided, although this can be obtained orally from an IHP representative or by comparing IHP decision letters with an applicant's records of payment. The breakdown of payments for specific home repairs or personal property damage will also not be provided in writing, but as with the overall list of payments, this can be obtained orally from an IHP representative.²⁷

The other main source of federal disaster benefits is, somewhat oddly, available through the federal Small Business Administration (SBA) and its Disaster Loans programs. Disaster loans have been made available to help Sandy victims finance their recovery expenses. Despite the explicit orientation of the SBA, a category of disaster loans is available to individuals to help them finance up to \$200,000 in home repairs and \$45,000 in personal property replacement.²⁸ SBA disaster loans can also be used in certain circumstances to refinance mortgages, although in practice this is not widely available to disaster victims.²⁹ SBA assistance is partially dependent on individuals' access to alternative sources of assistance: SBA offers its loans at reduced interest rates when individuals do

²⁷ Often one of the first things an advocate must do when advising a client is explain which repairs or personal property losses FEMA is paying for with an IHP award, and to explain that FEMA's dollar amounts for a given repair or loss are fixed and often far below the actual replacement cost of that item.

²⁸ U.S. SMALL BUS. ADMIN., HOME AND PERSONAL PROPERTY LOANS, *available at* <http://www.sba.gov/content/home-and-personal-property-loans> (last visited Dec. 3, 2013).

²⁹ *Disaster Loan Program—Fact Sheet about U. S. Small Business Administration (SBA) Disaster Loans*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/content/disaster-loan-program> (last visited Dec. 22, 2013); U.S. SMALL BUS. ADMIN., STANDARD OPERATING PROCEDURE 50-30-7, at 72 (2011) [hereinafter S.O.P. 50-30-7], *available at* <http://www.sba.gov/sites/default/files/SOP%2050%2030%207.pdf>.

not have access to alternative private credit options,³⁰ and SBA is subject to the same sequence-of-delivery requirements as FEMA.³¹ Unlike FEMA, SBA is a relatively transparent organization, and has published its Standard Operating Procedure for the disaster loans programs—an exceedingly helpful development.³²

Beyond the importance of SBA disaster loan programs as a recovery tool, working familiarity with them is a necessity for disaster assistance advocates because as a provider of last resort, FEMA requires that individuals apply to SBA for a loan before it will authorize grant assistance for “Other Needs Assistance” (ONA).³³ In other words, FEMA will provide IHP Housing Assistance funding in the form of rental assistance and home repair grants without an SBA disaster loan decision, but ONA assistance such as transportation, medical, personal property, and various other costs will not be considered until an individual can provide an SBA letter effectively showing a remaining financial need for an ONA expense.³⁴

2. Private Insurance (Homeowner’s and Flood Insurance)

The legal needs of Sandy victims also forced NYLAG attorneys to grapple with private homeowner’s and flood insurance issues for the first time. In New York City, over 370,000 homes, apartments, and other residences were affected.³⁵ In Long Island, over 58,000 residences were affected.³⁶ As mentioned above, entire categories of federal disaster assistance are not available to disaster victims

³⁰ See 13 C.F.R. § 123.104 (2013).

³¹ The Stafford Act prohibits federal aid from duplicating assistance that a disaster victim receives from local government, charitable organizations, insurance proceeds, or any other sources. 42 U.S.C. § 5155 (2012). To address this “duplication of benefits” rule, FEMA and the SBA established a sequence of delivery protocol that takes into account disaster aid from other sources before determining the amount of a FEMA grant or SBA disaster loan. See 44 C.F.R. § 206.191 (2013); see also S.O.P. 50-30-7, *supra* note 29, at 98.

³² See generally S.O.P. 50-30-7, *supra* note 29.

³³ See 44 C.F.R. § 206.191(d)(1)(i), (d)(2)(iii), (d)(2)(iv) (2013).

³⁴ For applicants with very modest means and clear documentation indicating such, FEMA will evaluate the application for ONA without requiring an SBA loan application. Advocates can determine whether a client can skip the SBA loan application if the FEMA file contains a note indicating “SBA = FIT,” which means that the applicant has failed the SBA income test.

³⁵ CITY OF N.Y., COMMUNITY DEVELOPMENT BLOCK GRANT-DISASTER RECOVERY: PARTIAL ACTION PLAN A, at 25 (2013), available at http://www.nyc.gov/html/recovery/downloads/pdf/nyc_cdbg-dr_action_plan_hud_submission.pdf.

³⁶ N.Y. STATE OFFICE OF CMTY. RENEWAL, STATE OF NEW YORK ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DISASTER RECOVERY 5–6 (2013), available at <http://www.ny.gov/assets/documents/CDBGActionPlan.pdf>.

who have insurance coverage.³⁷ Although private individual insurance is not traditionally included in the ambit of legal services providers, SRU recognized early that a comprehensive response to Sandy would be severely incomplete without addressing this fundamental component of storm victims' recovery. Indeed, insurance issues are among the most long-running and intractable issues that NYLAG attorneys are handling.

NYLAG reached out to the private bar to fill the knowledge gap in federal³⁸ and state residential insurance law. Private insurance law firms provided substantive pro bono training on insurance advocacy, and SRU attorneys quickly incorporated insurance issues into their legal analyses. With increased experience and further trainings, they were able to advise and represent clients in flood insurance claims settlement and appeals, homeowner's insurance negotiations, and consumer disputes with contractors and public adjusters. SRU attorneys also began to represent low-income homeowners in insurance mediations against their homeowner's insurance providers as soon as that special disaster-relief program was implemented by the American Arbitration Association.³⁹

³⁷ See discussion *supra* Part I.B.1.

³⁸ Unless there is a special policy (generally a policy that is imposed by the mortgage bank because the mortgaging party, likely a homeowner, has not purchased a compliant flood insurance policy, referred to as "force-placed insurance") or additional-coverage (an "excess") policy, flood insurance in the U.S. is organized under FEMA's National Flood Insurance Program (NFIP). NFIP has standard insurance contracts that it uses for residences and other types of insurable property. See generally NFIP, STANDARD FLOOD INSURANCE POLICY – DWELLING FORM (2000), available at <http://www.fema.gov/media-library-data/20130726-1730-25045-6388/f122dwellingform0809.pdf>. Additionally, flood insurance policy interpretation is governed by federal—not state—laws, regulation, and policy. See *DeCosta v. Allstate Ins. Co.*, 730 F.3d 76, 83 (1st Cir. 2013); DWELLING FORM at 18 ("This **policy** and all disputes arising from the handling of any claim under the **policy** are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, et seq.), and Federal common law." (emphases in original)).

³⁹ See Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces DFS Mediation Program for Disputed or Denied Insurance Claims for Storm Sandy Homeowners (Feb. 25, 2012), available at <https://www.governor.ny.gov/press/02252013-%20dfs-mediation-program-for-disputed-or-denied-insurance-claims>.

A similar program operates in New Jersey for Sandy claims arising there, and these types of post-disaster insurance claim arbitration programs have become common in the years following the Hurricane Katrina disaster. See *Storm Sandy Insurance Mediation Program*, N.J. STATE DEP'T OF BANKING & INS., http://www.state.nj.us/dobi/division_consumers/insurance/sandymediation.html (last visited Dec. 22, 2013); see also *Disaster Recovery Programs*, AM. ARBITRATION ASS'N (AAA) (2013), <http://www.adr.org/aaa/faces/aoe/gc/government/statenaturaldisasterprograms> (noting AAA programs for Hurricane Katrina, Superstorm Sandy, and a standing program for North Carolina homeowners with claims from declared natural disasters).

The settlement of flood insurance claims has presented a unique challenge. Despite the flood damage wrought by hurricanes and tropical storms in New York in recent years⁴⁰ and the unfortunately high frequency of devastating hurricanes and other flood events across the United States, there is generally little written information available on preparing, adjusting, and litigating flood insurance claims. This includes, notably, case law.⁴¹ As a result, beyond consulting with experienced attorneys directly, much of the knowledge gained in flood insurance law and claims settlement has come through “on the job” training.

For example, one of the most pressing issues that NYLAG, other Sandy legal services providers, and private attorneys were dealing with as this Article was being written was filing compliant proofs of loss for flood insurance claims. A proof of loss is a standard document in real property insurance claims that serves as an official statement of damages for insured property for a given event, such as Sandy. In the context of public interest legal services providers and Sandy floodwaters damages, a proof of loss refers to the sworn-under-penalty-of-perjury statement that a policyholder must make within a specific timeframe to the insurance company⁴² to remain compliant with the terms of a Standard Flood Insurance

⁴⁰ N.Y. STATE OFFICE OF CMTY. RENEWAL, *supra* note 36, at 7 (noting that about 9,300 owner-occupied homes in New York City and Long Island—including Bronx, Kings, Nassau, Queens, Richmond and Suffolk counties—suffered damage from Hurricane Irene).

⁴¹ A Westlaw search reveals an average of about thirty decisions per year over the last ten years involved the regular Standard Flood Insurance Program (SFIP) within the NFIP, although some number of these cases may not involve the Dwelling Form contract that applies to individual homeowners. A substantial number, as will be shortly discussed, involve little more than simple decisions on summary judgment motions against policyholders who failed to submit a compliant proof of loss for their flood insurance claim by the relevant deadline. More importantly, NYLAG experience indicates that even with this number of decisions, there are many important questions that are either only partially resolved or are totally unresolved by the federal courts.

⁴² Most SFIP policies are issued under the Write Your Own (WYO) program, in which NFIP grants private insurers the right to issue and administer SFIP policies in their own names in return for potentially profitable operating allowances from NFIP. The WYO program leads to confusion among homeowners, as it is very easy to confuse the IHP and the NFIP as just “FEMA,” or to believe that any policy administered by a private insurer is not an NFIP policy. See NAT’L FLOOD INS. PROGRAM, FLOOD INSURANCE MANUAL, at REF-1 (2013), *available at* http://www.fema.gov/media-library-data/475d6c4f6dc907803f7392155ca50d60/02_reference_508_oct2013.pdf. Over eighty percent of SFIP policies are issued and administered by WYO carriers operating as fiscal agents and under the authority of the NFIP. Memorandum W-13058 from James A. Sadler, FEMA, for Write Your Own (WYO) Principal Coordinators, WYO Vendors, and NFIP Direct Servicing Agent (Sept. 23, 2013), *available at* <http://bsa.nfipstat.fema.gov/wyobull/2013/w-13058.pdf> (mandating, by way of a policy statement, WYO carriers and NFIP staff to participate in certain non-binding mediations

Program (SFIP) contract.⁴³ The consequence of the failure to meet this obligation to submit a compliant proof of loss by the stated deadline—under normal terms, within sixty days of the date of loss⁴⁴—is potential denial by the insurer of further adjustment of the claim,⁴⁵ and summary judgment against the individual should she bring suit against the insurer for breach of contract.⁴⁶

that are organized by a state following a major disaster). The remaining policies are serviced by NFIP under its NFIP Direct arm.

⁴³ See *Proof of Loss*, FEMA, <https://www.fema.gov/media-library/assets/documents/9343?id=2545> (last visited Dec. 22, 2013) (providing a link to the NFIP model cover page for the proof of loss and defining it as “a form used by the policyholder to support the amount they are claiming under their policy, which must then be signed and sworn to, and submitted with supporting documentation”). The Dwelling Form contract that is used for residential homeowners in either non-condominium, one-to-four-family buildings, or a single-family residence in a condominium building, is available at 44 C.F.R. pt. 61, app. A(1) (2013) and through the FEMA website at <http://www.fema.gov/media-library-data/20130726-1730-25045-6388/f122dwellingform0809.pdf>. The proof of loss requirements are set forth in 44 C.F.R. pt. 61, app. A(1), art. VII(J)(3) and (4).

⁴⁴ 44 C.F.R. pt. 61, app. A(1), art. VII(3), (4). As with other large-scale declared natural disasters, the NFIP extended the proof of loss filing deadline for Sandy flood insurance claimants from sixty days to one year. Memorandum W-12092a from David L. Miller, FEMA, for Write Your Own (WYO) Company Principal Coordinators, WYO Vendors, NFIP Direct Servicing Agent, and Independent Adjusting Firms (Nov. 9, 2012), available at <http://bsa.nfipstat.fema.gov/wyobull/2012/w-12092a.pdf>. As this deadline approached, the NFIP issued another deadline extension. See Memorandum W-13060a from David L. Miller, FEMA, for Write Your Own (WYO) Company Principal Coordinators, WYO Vendors, NFIP Direct Servicing Agent, and Independent Adjusting Firms (Oct. 1, 2013), available at <http://www.nfipiservice.com/Stakeholder/pdf/bulletin/w-13060a.pdf> (extending standard flood insurance proof of loss time requirement set out in prior notice). As this Article went to print, the NFIP extended the Proof of Loss deadline a third and likely final time—from eighteen to twenty-four months from the date of loss—although this does not mean that the one-year statute of limitations for filing in federal court has been extended.

⁴⁵ While there is no public guidance from NFIP to WYO carriers (and hopefully no private explicit guidance on this point), select federal court decisions note insurers’ refusals to deal with policyholders who are non-compliant with the proof of loss requirement, even when it seems litigation is not in the parties’ minds. See, e.g., *Hughes v. Am. Nat’l Prop. & Cas. Ins. Co.*, No. 12-1527, 2013 WL 3776486, at *2 (E.D. La. July 16, 2013) (“In March of 2012, ANPAC notified Hughes’ counsel that Hughes’ claim had been closed without payment because Hughes had not provided a sworn proof of loss.”); *Evanoff v. Standard Fire Ins. Co.*, 534 F.3d 516, 518 (6th Cir. 2008) (“Standard Fire wrote Evanoff and informed him that because he had failed to submit a proof of loss from within 60 days from the date of loss, Standard Fire was denying plaintiff’s flood claim.”). NYLAG’s own experience dealing with adjusters and insurer representatives in the days and weeks before the Proof of Loss deadline was extended a third time does indicate that claim negotiation will completely end once the deadline passes, unless the homeowner first obtains a waiver of the deadline directly from NFIP itself.

⁴⁶ Advocates may take their pick of the dozens of opinions that are little more than repetitious statements by courts of this point. See, e.g., *Jacobson v. Metro. Prop. & Cas. Ins. Co.*, 672 F.3d 171, 178 (2d. Cir. 2012) (upholding the district court’s grant of

2013] NATURAL DISASTERS & ACCESS TO JUSTICE 15

There are multiple issues that advocates encounter in helping homeowners file proofs of loss. First, as a practical matter, filing a proof of loss for an individual homeowner can be a very substantial undertaking, as a proof of loss must describe, item by item and room by room, the damage that an individual has suffered.⁴⁷ More concretely, this means listing exactly the identity of the damaged item, the quantity of damaged item, the replacement cost for that damaged item, the estimated depreciation of the item's value between the time of purchase or installation and the date of the loss, and the resulting current value of the item (called the "actual cash value" of the item).⁴⁸ Composing the document itself therefore can take many hours.

In the case of home repairs, there is the additional problem of securing sufficient documentation to justify the individual's posi-

summary judgment to the defendant WYO insurer); *Marseilles Homeowners Condominium Ass'n Inc. v. Fidelity Nat'l Ins. Co.*, 542 F.3d 1053, 1054 (5th Cir. 2008); *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 387 (9th Cir. 2000). It is also important that advocates are aware that, contrary to the prevailing law in many states that ambiguities in state-regulated insurance contracts are resolved in favor of the policyholder, SFIP contract provisions, because they affect the federal treasury, are strictly enforced against the relevant party. *Haber v. St. Paul Guardian Ins. Co.*, 137 F.3d 691, 697–98 (2d. Cir. 1998) (citing *Matthews v. Am. Cent. Ins. Co.*, 154 N.Y. 449, 456–57 (1897)) (noting New York court rulings on the contra-insurer rule of policy construction); *Jacobson*, 672 F.3d at 175 (explaining that SFIP "requirements must be strictly construed and enforced" and citing sister-circuit cases in support of this position). In many instances, the relevant party is the individual policyholder.

⁴⁷ 44 C.F.R. pt. 61, app. A(1), art. VII(J)(4)(f), VII(J)(4)(i) (respectively requiring "detailed repair estimates" and "an inventory of damaged personal property"). Both of these phrases seem innocuous until one realizes that this entails hundreds, perhaps many hundreds of items, either with their own description and quantity, and replacement value, depreciation estimate, and resulting actual cash value. In the case of personal property, this means describing the item with enough particularity to verify its identity, which could mean digging through one's moldy, decomposing personal belongings to identify and document brands and model numbers, and justifying the replacement cost value, which could mean driving to a local department store or using a local library's computer to figure out the replacement item's cost. The item-by-item, room-by-room requirement for flood insurance claims and proofs of loss is not stated in those terms in the SFIP for home repairs, but is a well-known and bona fide requirement. See Memorandum W-13060a from James A. Sadler, FEMA, for Write Your Own (WYO) Company Principal Coordinators and National Flood Insurance (NFIP) Servicing Agent (May 16, 2013), available at <http://bsa.nfipstat.fema.gov/wyobull/2013/w-13027a.pdf> ("When a policyholder disputes the adjuster's payment recommendation and estimate, a written request for a supplemental claim should be submitted along with a completed, signed, and sworn-to proof of loss attaching all documentation to fully support the supplemental claim such as: [an] . . . itemized (room by room) contractor's estimate . . .").

⁴⁸ See 44 C.F.R. pt. 61, app. A(1), arts. II(B)(2), VII(J)(3) (defining, respectively, "actual cash value" as the difference between replacement cost value and the value of its physical depreciation, and requiring a "quantity, description, and actual cash value" for each item of damaged personal property).

tion. In addition to the fact that “detailed repair estimates” are required to “justify th[e] amount” claimed under an individual’s particular SFIP contract,⁴⁹ fully itemized estimates or invoices justifying repair costs are required for a compliant proof of loss.⁵⁰ Most individuals are not familiar with the construction industry, and contractors in the New York area are generally unfamiliar with the vastly more detailed requirements of repair estimates that are needed to support insurance claims. Experience shows that contractors will write repair estimates that do not provide detailed line items, including listings of discrete repairs, corresponding quantities, and corresponding prices for each repair.⁵¹

The reason seems to be two-fold: in a highly skewed post-disaster seller’s market, contractors do not want to spend any time doing anything that is not actual repair work; and generally, contractors in a regular or average market setting do not write anything remotely close to line-by-line, room-by-room estimates. Therefore, working with contractors to develop these estimates can be a challenging and time-consuming process. Furthermore, because storm victims desperately want to rebuild, they are not interested in firing contractors just because these contractors will not produce the kind of detailed estimates a lawyer or other advocate says they will need for a future dispute. The consequence is that many homeowners are still struggling to file a compliant proof of loss nearly a year after the storm. Thanks to the deadline extension,⁵² storm victims have crucial extra time to meet this requirement, enabling them to continue negotiating with the insurer for more money under the policy,⁵³ and preserving the right to their

⁴⁹ *Id.* pt. 61, app. A(1), art. VII(J)(4)(f), VII(J)(5).

⁵⁰ *See, e.g.,* Eichaker v. Fidelity Nat’l Prop. & Cas. Ins. Co., No. 07-4485, 2008 WL 2308959, at *3 (E.D. La. June 3, 2008) (holding that a compliant proof of loss must be supported by justification from contractor estimates or the insured’s persons own research or knowledge to survive summary judgment). *See also* Memorandum W-13058 from Sadler, *supra* note 42.

⁵¹ For example, NYLAG has seen estimates that have line items such as “repair exterior” or “install new electrical.” The point is not that contractors are doing something wrong, especially if this is the usual course of business; the point is that in the context of disaster relief and high-dollar, emergent insurance claims, this type of estimate is unfortunately nearly useless.

⁵² Memorandum W-13060a from Miller, *supra* note 44.

⁵³ This limited discussion glosses over or omits many, many important issues in flood insurance claims settlement for Sandy victims. There have been many issues in Staten Island, for example, where homes seem to have been built with a first floor below the surrounding elevation to be used as a garage, but homeowners have finished some of that space and used it as bedrooms, living rooms, and other living areas. Especially when these homes are built after the home’s corresponding Flood Insurance Rate Map (FIRM)—in NFIP parlance, meaning the home is a post-FIRM

day in court should an informal agreement prove impossible.

C. Levels of Assistance

Thus in a remarkably short time SRU was able to add two main legal issues to its practice areas: federal disaster assistance and private insurance. With this expanded roster of core competencies, SRU was able to provide legal assistance in a wide variety of issue areas vital to the recovery concerns of Sandy victims: mainly housing, foreclosure prevention, disaster assistance, homeowner's insurance, and flood insurance assistance. SRU advocates advised clients on their eligibility for disaster recovery programs and benefits, identified deadlines and next steps to secure their eligibility and rights to appeal, and helped prioritize their options in the confusing aftermath of the storm. They provided varying levels of assistance based on clients' needs and the availability of scarce resources—at times, providing advice and counsel for clients to proceed *pro se*, but also stepping in for direct representation where appropriate. SRU also relied on NYLAG's pre-existing pro bono

home—this has often resulted in a severe coverage restriction for flood damages otherwise covered by an SFIP. FEMA, COMMUNITY STATUS BOOK REPORT: NEW YORK: COMMUNITIES PARTICIPATING IN THE NATIONAL FLOOD PROGRAM 19 (updated Dec. 9, 2013), available at <http://www.fema.gov/cis/NY.pdf> (noting an effective FIRM date for New York City of November 16, 1983); 44 C.F.R. pt. 61, app. A(1), arts. II(B)(5), III(A)(8), III(B)(3) (respectively, defining “basement” and setting coverage restrictions for structural and personal property coverage for property in a basement of certain types of post-FIRM homes). Another ongoing and significant issue is that following Sandy, FEMA has begun the long-overdue process of updating the FIRMs for New York City and the metropolitan area (among other areas). For homeowners to avoid the same type of coverage restriction described above—and to avoid very high insurance premiums—the top of the floor of the lowest level of the building must, as a general rule, be elevated to at least the Base Flood Elevation (BFE) level displayed on the FIRM. See 44 C.F.R. pt. 61, app. A(1), art. III(A)(8), III(B)(3) (coverage restrictions in the Dwelling Form); FEMA, FLOOD INSURANCE MANUAL (Oct. 1, 2013), available at http://www.fema.gov/media-library-data/7f08b184ce6283d1a468d897a56cdb02/05_rating_508_oct2013.pdf (listing the rating rules for A- and V-zone structures, including the general difference for rating between structures found in A- and V-zones). The issue is that such maps for New York City presently remain “preliminary” as of publication, and therefore homeowners remain unsure of exactly to what height they should elevate their homes to avoid unnecessary costs but remain compliant with their SFIP. See *Preliminary Flood Insurance Rate Maps Now Available for New York City*, FEMA REGION II: COASTAL ANALYSIS AND MAPPING (Dec. 4, 2013), <http://www.region2coastal.com/site-news/preliminaryfloodinsuranceratemapsnowavailablefornewyorkcity>; *View Your Community's Preliminary Flood Hazard Data*, FEMA, <http://www.fema.gov/view-your-communitys-preliminary-flood-hazard-data-0> (updated Sept. 5, 2013; last accessed Dec. 10, 2013) (“Preliminary data are not for use, distribution, or replication until the data are finalized and labeled as ‘effective’ on the MSC. Preliminary data are for review and guidance purposes only. By viewing preliminary data, the user acknowledges that the information provided is preliminary and subject to change.”).

contacts to refer cases directly to private attorneys who were eager to help Sandy victims.

Direct representation, advice, and counsel were not the only contexts in which SRU advocates addressed the recovery needs of Sandy victims. SRU staff also held several trainings for pro bono attorneys on disaster law advocacy and for case managers and social services staff to aid them in spotting potential legal issues among their clients. SRU also developed a dynamic database of disaster recovery resources and program eligibility for disaster victims. The Storm Help Hotline became a clearinghouse of sorts for Sandy victims seeking government and nonprofit aid. As initial temporary programs were phased out and newer recovery programs began, SRU updated its resource database accordingly. This added a crucial layer of assistance in SRU's comprehensive legal services: in addition to spotting and analyzing a wide variety of legal issues, SRU advocates could also identify grant programs that would provide vital recovery assistance, and tailor legal advice with an eye toward obtaining or maintaining eligibility for aid programs.

D. Expanded Client Populations

Despite its numerous points of entry for potential clients, SRU did not simply wait for Sandy victims to reach out to NYLAG. SRU conducted outreach to affected areas, notifying as many people as possible about their right to register for federal benefits. SRU paid particular attention to immigrant communities, members of which may be reticent to seek out federal assistance in any form. SRU advised clients of immigration status requirements for FEMA, SBA, and other disaster recovery programs, and referred eligible disaster victims to appropriate recovery resources. NYLAG and its community partners have also made a concerted effort to provide interpreters⁵⁴ in person at as many legal clinics as possible. Between NYLAG's own considerable linguistic skills on staff and the cooperation of its partner organizations, SRU has been able to overcome this significant barrier in providing legal services.

Commensurate to the effort to reach out to as many areas of New York City and the metropolitan area as possible, SRU expanded from its historic client population to serve new client populations that suffered from the broadly destructive force of Sandy. The most significant new segment of clients was homeown-

⁵⁴ SRU's clients speak a wide variety of languages, including, but not limited to, Albanian, Bengali, Cantonese, Creole, French, Hebrew, Hindu, Korean, Mandarin, Russian, and Spanish.

ers—a more socioeconomically diverse group than the traditional legal services client group, including some households with higher incomes that would not normally qualify for legal services but had a tremendous need for speedy and comprehensive legal assistance, given Sandy’s unprecedented destruction and the attendant mix of public programs and private legal issues affected. This expanded client population presented new legal issues in the form of residential property insurance claims.⁵⁵ Homeowners were also the main source of requests for assistance regarding contractor issues and requests for guidance regarding the New York State, New York City, and local rebuilding grant programs being funded through FEMA and the Department of Housing and Urban Development (HUD).⁵⁶

II. CASE STUDIES

A. Client A—FEMA Home Repair and Basement Living Areas

Client Ms. Francine Faraglioni⁵⁷ lived with her two children in a neighborhood of Staten Island that was one of the hardest-hit areas of the New York City metropolitan area. She owns her home, a structure split into two units: a top-floor unit that the client rents for income, and a lower-level unit composed of the home’s ground and basement floors, which she used at the time of Sandy as her primary residence.

The home was severely flooded during Sandy, and Ms. Faraglioni’s family was, as with so many Staten Island families, forced to flee to temporary housing. The home’s basement was almost completely washed out, and the first floor sustained flood damage as well. Ms. Faraglioni filed an application with FEMA shortly after the storm passed, and representatives from FEMA’s Individuals and Households Program (IHP) granted her several thousand dollars

⁵⁵ Interestingly, SRU did not receive many requests for assistance from renters experiencing issues with renter’s insurance claims following Sandy.

⁵⁶ These are, respectively, New York State’s NY Rising program, funded by a HUD Community Development Block Grant (CDBG); New York City’s Build It Back Program, also funded by a HUD CDBG; and local programs, funded by FEMA’s Hazard Mitigation Assistance (HMA) grant programs. *See generally supra* notes 35–36; *Hazard Mitigation Assistance*, FEMA, <http://fema.gov/hazard-mitigation-assistance> (last visited Oct. 25, 2013). Note that the City recently released an updated action plan with various amendments. *See* CITY OF N.Y., COMMUNITY DEVELOPMENT BLOCK GRANT: DISASTER RECOVERY ACTION PLAN INCORPORATING AMENDMENTS 1–4 (2013), *available at* http://www.nyc.gov/html/cdbg/downloads/pdf/CDBG-DR-Action-Plan-incorporating-Amendments-1-4_11-25-13.pdf.

⁵⁷ The names of all clients in this Article have been changed to protect their identities.

in home repair costs, among other assistance in the months after the storm. Given the damage to Ms. Faraglioni's home and FEMA's repair-cost methodology, however, that assistance was insufficient, and she began appealing FEMA's determination on her appropriate home repair assistance under the IHP.

At this point, it is useful to understand the layout of the client's residence. At the time of the storm, Ms. Faraglioni occupied the residence with her two young children. Those children occupied bedrooms located on the first floor of the residence, while the client's bedroom was in the basement of the residence, along with a living room and other rooms. The FEMA inspection report was internally inconsistent: although its summary description of the property indicated three occupied bedrooms, the inspection report's room-by-room damage inventory noted that the home had only two bedrooms. Similarly, the residence according to FEMA also had two living rooms: one on the first floor, and one in the basement. The FEMA inspector seems to have decided that the residence's first-floor dining room should be an optional second living room, thus limiting her assistance.

FEMA's initial home repair assistance award, which stood through Ms. Faraglioni's three initial appeals and our first appeal, did not cover any structural repairs to her basement. In other words, Ms. Faraglioni received no funds to repair her bedroom or her living room, as FEMA normally would do when the bedroom is occupied and there is no substitute bedroom and living room for the household to use.⁵⁸ FEMA's award instead, after covering essential appliances and exterior elements of the home, only provided funds for her to remove debris, pump out storm waters, and disinfect her basement.

⁵⁸ There actually is no publicly available policy or even guidance on this point. FEMA still informally uses the phrase "essential living areas" when referring to their decision-making rationale for IHP home repair and personal property assistance. *See, e.g.*, Press Release, FEMA, FEMA Housing Assistance Is Based on Damage to Essential Living Areas (Dec. 18, 2012), <http://www.fema.gov/news-release/2012/12/18/fema-housing-assistance-based-damage-essential-living-areas>. It seems then that FEMA made the now-obsolete regulations governing home repair assistance for disasters declared before October 15, 2002, its internal policy for disasters declared thereafter. *See* 44 C.F.R. § 206.101(g)(4) (2013) ("Repairs may be authorized to quickly repair or restore to a livable condition that portion of or areas affecting the essential living area of, or private access to, an owner-occupied primary residence which was damaged as a result of the disaster."); *id.* § 206.101(c)(3) ("Essential living area means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.").

Based on the documents obtained through the Freedom of Information Act (FOIA) request submitted on Ms. Faraglioni's behalf, the client herself wrote three appeal letters to FEMA asking for reconsideration of her home repair assistance specifically. Based on FEMA's decision letter and internal program notes for Ms. Faraglioni's case, FEMA issued only one decision for these three appeals, and it came well over two months after the client had submitted her initial appeal. These types of delays and silences from FEMA underscore, even for advocates, that it is important to follow up with FEMA to establish that an appeal has been received, that it has been deemed an appeal, and that FEMA should make a decision on that appeal.

Moreover, here it is worth underscoring that a conversation with FEMA IHP staff members is often the only way that one can ascertain exactly why an appeal was unsuccessful. The denial letter that Ms. Faraglioni received after her three appeals simply stated that FEMA "ha[d] reviewed your appeal for additional Home Repair [sic] and any documents that [the client] may have provided, along with the FEMA inspection(s) of your home," and that FEMA "ha[d] determined that the previous amount of assistance we [sic] provided was correct." This level of reasoning does not provide much guidance to the advocate in determining where additional evidence and documentation is necessary to craft a subsequent successful appeal. While it is fairly clear from FEMA's decision that the agency did not consider the client's basement bedroom and living room to be essential living areas even though practice dictates that an occupied bedroom and a household's sole living room are essential living areas, it was only after speaking with FEMA—directly in the form of telephone conversations with IHP customer service representatives and indirectly in the form of FOIA-obtained case notes—that it became clear that FEMA applies a presumption of non-essentiality to any basement living area. It therefore becomes, at least practically, the burden of the homeowner to demonstrate that a basement area is essential.

Thus, with regard to assistance for bedroom repairs, the first appeal submitted for Ms. Faraglioni stressed laws, regulations, and policies that place importance on how FEMA determines essential living areas, and in particular, bedrooms. In fact, FEMA does not have direct policy, or at least publicly available direct policy,⁵⁹ on coverage of bedrooms for the purposes of determining appropriate home repair assistance. Rather, there is direct guidance in the *Code*

⁵⁹ See discussion *supra* Part I.B.1.

of *Federal Regulations* (CFR) and the *Disaster Operations Legal Reference* on related assistance, such as rental assistance for displaced households⁶⁰ and personal property awards;⁶¹ there are also general principles, also in the CFR, that home repair awards are to restore a home to a “safe and sanitary living or functioning condition,” and that eligible home repair costs must take in account “the needs of the occupant.”⁶² Thus, the primary argument in Ms. Faraglioni’s appeal for bedroom home repair assistance was an analogy: based on how FEMA determines what an essential bedroom is for the purposes of rental assistance and personal property awards, FEMA should provide Ms. Faraglioni with appropriate assistance for repairs to her basement bedroom.

Additionally, it seemed useful to look to HUD, the federal agency that regulates housing quality. While HUD regulations are not binding in any way, direct support for Ms. Faraglioni’s position would hopefully be persuasive to the IHP appeals officer reviewing the appeal. HUD itself, however, also has no occupancy policy that could be used to argue that FEMA should recognize Ms. Faraglioni’s household’s right to occupy three bedrooms, and therefore receive home repair funds for the third basement bedroom.⁶³

⁶⁰ See, e.g., 44 C.F.R. § 206.117(b)(1)(i)(B) (basing FEMA IHP temporary rental assistance on the “household’s bedroom requirement”); FEMA, HELP AFTER A DISASTER: APPLICANT’S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM 25 (2008), available at http://www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf (indicating that FEMA policy defines a “household’s bedroom requirement” as “the number of occupied bedrooms in the applicant’s home at the time of the disaster”).

⁶¹ 44 C.F.R. § 206.119(c)(1)(ii); FEMA, DISASTER OPERATIONS LEGAL REFERENCE 6–68 (2011) (interpreting “necessary expenses or serious needs” for the purposes of determining eligible bedrooms as “the number of pre-disaster occupied bedrooms up to six. . .”). This publication is not available online, but copies can be obtained by contacting FEMA (information is available at <http://www.ready.gov/publications>) itself—perhaps most easily through a FEMA IHP Voluntary Agency Liaison (VAL).

⁶² 44 C.F.R. § 206.117(c)(1) (“Repairs to the primary residence or replacement of items must be disaster-related and must be of average quality, size, and capacity, taking into consideration the needs of the occupant.”); *Id.* § 206.117(b)(2)(i) (“FEMA may provide financial assistance for the repairs of uninsured disaster-related damages to an owner’s primary residence. The funds are to help return owner-occupied primary residences to a safe and sanitary living or functioning condition.”).

⁶³ HUD policy primarily speaks to a necessary number of bedrooms and a safe living condition in terms of habitability, or an adequate number of bedrooms for the number of occupants. See HUD, HUD HANDBOOK 4350.3: OCCUPANCY REQUIREMENTS OF SUBSIDIZED MULTIFAMILY HOUSING PROGRAMS 3-66 (2009), available at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_35639.pdf. Being concerned with over- and under-utilization of housing, however, HUD policy generally grants residence owners discretion in determining the number of necessary bedrooms, so there was no analogous rule to rely on here. *Id.* at 3-65–3-67 (citing Fair Housing Enforcement–Occupancy Standards Notice of Statement of Policy, 63 Fed. Reg. 70256, 70257 (Dec. 18, 1998)).

HUD instead concentrates on overcrowding and safety, leaving owners and occupiers of housing discretion in determining what a “correct” or “appropriate” number of bedrooms for a given household is. Nonetheless, given the lack of explicit FEMA policy on this issue and HUD’s purview, HUD’s policy of granting owners discretion in determining bedroom occupancy seemed at least useful in arguing to IHP that because Ms. Faraglioni could occupy three bedrooms with her three-person household and did in fact occupy three bedrooms at the time Sandy washed through her home, assistance for repairing that third bedroom was proper.

For obtaining repair assistance for the living room, in contrast, there was little legal authority to reference in an appeal to FEMA. As noted previously, there is no publicly available policy on coverage of a living room.⁶⁴ Thus, the only argument that was advanced (in the form of a sworn statement from Ms. Faraglioni) was factual: that the IHP inspector who visited Ms. Faraglioni’s home after Sandy incorrectly mapped her residence, and the living room is actually located in the basement, not on the first floor. That the appeal reviewer should authorize appropriate assistance once the basement living room was recognized as such was left implied.

Although many Sandy victims have suffered from this issue of non-recognition of essential living areas located in a basement, we hoped that the additional evidence of a sworn statement and a full discussion of FEMA’s regulations and policy on coverage would be sufficient. The IHP reviewer, however, disagreed, and denied the fourth appeal for Ms. Faraglioni.

At present, Ms. Faraglioni still lives in temporary housing, as she is awaiting funds from either the HUD-funded Build It Back program or from a successful FEMA appeal to return her home to habitability. While she is fortunate in that she still has two relatively habitable bedrooms on the first floor of her residence, she still has suffered tens of thousands of dollars in losses and has an ultimately uninhabitable home. There are many examples of households that desperately need a living area to be repaired, perhaps for medical equipment or a caretaker, or simply to avoid overcrowding. These households are being refused funds almost a year after the storm, just because part of their residence is in a basement.

⁶⁴ See *supra* note 58.

B. Client B—Displaced Renter Affected by New Zoning and Flood Elevation Regulations

Ms. Anderson is a 64-year-old, low-income Brooklyn resident. She had been living in her rent-stabilized basement apartment in Manhattan Beach for more than thirty-three years when Sandy struck. The Atlantic Ocean filled her home with about ten feet of seawater, and Ms. Anderson, who chose to not evacuate, nearly drowned. Fleeing her inundated home in the middle of the night with her adult son, Ms. Anderson rented a small room from an acquaintance, which she could afford due to FEMA rental assistance, while she waited for her landlord to make repairs. Her son was forced to find his own accommodation.

By the time Ms. Anderson contacted NYLAG in February, nearly four months after the storm, her landlord had still made no attempt to repair her unit and return her to her home. In fact, when she returned to the building to check her mail, she discovered that she had been illegally locked out of her floor. When she asked her landlord when the repairs would be completed, a representative from the management company told her that the repairs would likely take three to five years, and thus, she would have to find somewhere else to live. Her landlord then offered to move her to another unit that was significantly smaller and more expensive. Believing she had no other option, Ms. Anderson almost signed the lease. Fortunately, however, she called the SRU hotline before agreeing to move. The NYLAG attorney she spoke with advised her that, because she leased a rent-stabilized apartment, she was entitled to the repairs and did not have to give up her apartment.⁶⁵

Following NYLAG's advice, Ms. Anderson initiated a Housing Part (HP) proceeding in Kings County (i.e. Brooklyn) Housing Court, seeking a judgment and order from the court requiring her landlord to make the repairs and restore her to possession.⁶⁶ Ms. Anderson filed the petition *pro se*; NYLAG subsequently appeared in court on her behalf and agreed to represent her in the case going forward. On the second appearance, the parties entered into a consent order, whereby Ms. Anderson's landlord agreed to correct all outstanding housing code violations within sixty days.

Shortly thereafter, however, Ms. Anderson discovered that

⁶⁵ See N.Y. COMP. CODES R. & REGS. tit. 9, §§ 2520.6, 2524.1 (2013).

⁶⁶ The duty of the HP court is to enforce the housing code and preserve affordable housing in New York City. It is a unique venue designed as a platform for tenants to bring suits against landlords that fail to make repairs and fail to comply with the New York City Housing Code.

construction in the apartment had ceased. The superintendent informed her that the landlord stopped making repairs because the New York City Department of Buildings issued a stop-work order and a violation alleging that residential occupancy of her unit was illegal. The landlord subsequently filed a motion in the HP proceeding alleging that Ms. Anderson could not legally be restored to her apartment, and sought to vacate the consent order on the ground that they were unaware of the legal status of the apartment at the time they agreed to make the repairs. The landlord also referred to newly amended city zoning regulations that required buildings in certain flood zones to be elevated.⁶⁷

NYLAG then filed an opposition to the landlord's motion and filed a cross-motion asking the court to compel her landlord to make the repairs. NYLAG argued that, because Ms. Anderson is a rent-stabilized tenant, her landlord is required to legalize her apartment and may not terminate her tenancy rights unless he can prove that legalization is impossible. There is an extensive body of case law finding that not only does the illegal status of an apartment "not exempt an apartment from rent stabilization entirely, but it also does not form a legal basis for the termination of a rent stabilized tenancy unless the apartment cannot be legalized."⁶⁸

The landlord argued that legalization is not possible because Ms. Anderson's unit is a basement apartment located in a flood zone and, therefore, cannot be converted to residential space pursuant to new building code regulations. On January 31, 2013, New York City amended its Building Code to incorporate new "Flood Resistant Construction" rules.⁶⁹ The relevant changes are found in the Building Code's Appendix G, which requires that all plans to build new structures or substantially alter existing structures within certain flood zones only be approved if the building is elevated in accordance with the base flood elevations (BFEs) set in FEMA's new flood elevation maps.⁷⁰ If Ms. Anderson's apartment were legal for occupancy, then Appendix G would not apply because the

⁶⁷ See *infra* notes 70–71 and accompanying text.

⁶⁸ C&E Assocs. LLC v. Hernandez, 2008 N.Y. Misc. LEXIS 3087, at *3–6 (N.Y. Civ. Ct. 2008) ("It is simply not the case that any illegally occupied apartment is exempt from the coverage of rent stabilization."). See also 625 West End Inc. v. Howard, N.Y. Misc. LEXIS 729 (1st Dep't 2001); Zaccaro v. Freidenbergs, 10 Misc.3d 143(A) (1st Dep't 2006).

⁶⁹ Exec. Order No. 230, City of New York Office of the Mayor (Jan. 31, 2013), available at http://www.nyc.gov/html/om/pdf/eo/eo_230.pdf.

⁷⁰ Appendix G imposes minimum requirements for development buildings in "areas of special flood hazard" within New York City. N.Y.C. BUILDING CODE appx. G, § G201 (2013). Usually known as Special Flood Hazard Areas (SFHA), these areas are

restoration of an existing apartment would not be considered a substantial alteration.⁷¹ Appendix G, however, does apply where the alteration involves the conversion of a space below the property's corresponding BFE from a non-habitable space into a habitable space.⁷²

NYLAG argued that the restoration of Ms. Anderson's apartment would not be considered a conversion because the actual use of the apartment prior to the storm was residential occupancy. The repair work would simply involve restoring a previously habitable space to its original use. It is unclear, however, whether the law refers to the actual previous use or the legal previous use. If by "habitable space" the law refers to an apartment that is legal for residential occupancy, Appendix G restrictions would apply because the restoration of Ms. Anderson's apartment would involve the conversion of a non-habitable space below the base flood elevation into a habitable space. Under such an interpretation, the landlord would be required to elevate the entire ninety-eight-unit building, which may be considered "impossible," and thus Ms. Anderson would not be entitled to repairs.

The housing court ultimately agreed with NYLAG that Ms. Anderson's landlord failed to sufficiently prove that legalization of her apartment was impossible. The landlord was ordered to resume repairs. This victory was short-lived, unfortunately, once further investigation revealed that the Department of Buildings would not approve a plan for conversion to residential space. This would bolster the landlord's claim that legalizing the apartment would be impossible and likely lead to housing court's decision being overturned.

As it became clear that Ms. Anderson would likely not be restored to possession, NYLAG requested that the landlord offer her a comparable apartment at a similar regulated rent instead. In re-

generally designated with an "A" or "V" prefix on Flood Insurance Rate Maps (FIRM).
Id.

⁷¹ The rule defines "substantial improvement" as

[a]ny repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed.

Id. However, there is an exception for repairs "necessary to assure safe living conditions" in pre-FIRM buildings, that is, buildings that were constructed before the current effective flood maps designated their locations as high-risk flood zones. *Id.*

⁷² *Id.* § G102.1.9.3.

sponse, the landlord claimed it had no comparable apartments in all of Brooklyn. NYLAG then served the landlord with a Supreme Court petition alleging wrongful eviction and seeking damages to compensate Ms. Anderson for the loss of her rent-stabilized tenancy based on a theory of breach of contract. Rather than pursue further litigation, the parties agreed to settle both cases. Ms. Anderson agreed to dismiss all claims against her landlord in consideration for \$25,000.

Over a year elapsed between Ms. Anderson's emergency evacuation during Sandy and the resolution of her legal dispute with the landlord. Throughout this ordeal she lived in a temporary apartment, uncertain when or if she would be able to return to her home. Ultimately, while Ms. Anderson once again has a more stable living situation, never again will she return to her home of over three decades, the home Sandy took from her in October 2012, and the home ultimately taken away from her by local and federal floodplain management decisions.

C. Client C—SRU's Holistic Approach to Assistance

As previously discussed, NYLAG's Storm Response Unit has many different practitioners that focus on various areas of disaster assistance. Sometimes, clients who contact SRU only need help with one specific issue and are referred to the appropriate expert. Many times, however, clients need assistance in different areas and, subsequently, receive assistance from several practitioners within the unit. Deborah James was a client who was able to benefit from SRU's wide array of expertise.

Ms. James owns a home on Long Island in Massapequa, New York. She is elderly, lives alone, and her main source of income is Social Security retirement benefits. When Sandy hit, the exterior and interior of Ms. James' home were affected and sustained severe damage. Like many homes in the area, the majority of the damage to her home was flood-induced. The exterior siding of the home was torn off by passing waters, and the outside doors all had to be replaced. The interior of the home was inundated with water, mud, and debris, and everything on the first level had to be cleaned, repaired, or replaced. The effects of the storm were devastating for Ms. James, and she had to start picking up the pieces of her life by herself. Ms. James received a minimal amount of disaster assistance from FEMA IHP and claim compensation from her homeowner's insurance policy, but she was fortunate enough to have

had a comprehensive flood insurance policy on her home that was issued through the National Flood Insurance Program (NFIP).

Ms. James originally contacted NYLAG for assistance with her flood insurance claim. At that point, Ms. James had received approximately \$56,000 as her flood insurance settlement. This was not enough to cover all of Ms. James' flood-related damages, and it appeared that Ms. James could benefit from NYLAG's assistance in arguing for additional payment under her policy. After reviewing Ms. James' insurance documents, including the insurance company's adjuster's report and Ms. James' contractors' estimates and invoices, however, a NYLAG attorney realized that Ms. James needed additional assistance beyond her flood insurance issue.

Ms. James initially hired a contractor who estimated that it would cost approximately \$117,000 to completely repair Ms. James' home. Ms. James had also hired a cleaning company to clean up the dirt, water, and debris that was brought into the home by the flood for \$13,000. While Ms. James had signed these contracts, she had only received approximately \$27,000 in advance payments from her flood insurance company at that time. The remainder of her insurance settlement money was being held by the bank that owned and serviced her mortgage.

Insurance companies must issue settlement checks to both the homeowner and the mortgage servicer, as the mortgage servicer has an interest in the home. Whether by contractual provision in the note or by commonly accepted policy, mortgage servicers will not simply sign over insurance proceeds checks to the homeowner for commencement of repairs. Instead, servicers hold the proceeds in escrow, potentially along with funds for property tax, insurance premium and other costs of real property ownership. Servicers are then supposed to, but frequently do not, provide a policy for release of escrow proceeds. Servicers also frequently do not follow the policy they have promulgated.⁷³

⁷³ At least to some, the role of mortgage servicers in delaying and vitiating Sandy victims' recovery was unforeseen. The back-and-forth between servicers and victims was often acrimonious, and the subject of much media coverage and political action. See, e.g., David Ariosto, *Banks Holding over \$200 Million in Sandy Payments*, (Feb 12, 2013), <http://www.cnn.com/2013/02/12/us/new-york-banks-sandy-payments/>; Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces DFS Investigation Identifies Banks with Worst Sandy Aid Statistics, (March 19, 2013), *available at* https://www.governor.ny.gov/press/03192013cuomo_dfs_worst_sandy_aid; Press Release, New York State Dep't of Fin. Services, Governor Cuomo Announces Fannie Mae and Freddie Mac Have Agreed to State's Request for New Rules to Accelerate the Release of Insurance Money to Homeowners Affected by Sandy (Feb. 26, 2013), *available at* <http://www.dfs.ny.gov/about/press2013/pr1302262.htm>.

More importantly, servicers set disbursement schedules for these insurance proceeds somewhat arbitrarily. Therefore, often-times homeowners' needs for proceeds, driven by their contractors' payment schedules, differ from these disbursement schedules. Sandy victims also frequently elected—and unfortunately continue to elect—to hire contractors without obtaining necessary documentation, including a payment schedule, a contract or receipts for services performed, and in some cases, even basic identifying information. Similarly, without these pieces of information, homeowners would find that their mortgage servicers effectively locked up their insurance funds.

In Ms. James' case, her bank withheld her insurance settlement funds because it required a final sign-off letter from the contractor that repairs had been completed, and she was embroiled in a dispute with her contractor over pricing and the type and quality of work that had been completed. Ms. James had paid the contractor \$9,000 for work completed to that point and was under the impression that this payment constituted the end of the business relationship. The contractor, however, later issued Ms. James an invoice for over \$30,000. When Ms. James refused to pay this amount, the contractor threatened to file for a mechanic's lien against her property, and he refused to provide documents to the bank that indicated his work was completed. Without the contractor's documents, and without legal intervention, the mortgage servicer could have held the insurance settlement funds indefinitely.

After NYLAG learned of this second issue, Ms. James was referred to a NYLAG attorney who specializes in contractors' disputes. This attorney successfully negotiated with the contractor, and the parties reached an agreement where Ms. James would pay a small fraction of the bill and the contractor would in turn provide a signed statement that confirmed that he would not file a lien on the property. Once the contractor's dispute was resolved, Ms. James, with the help of a NYLAG insurance attorney, was able to file a supplemental claim with her WYO⁷⁴ insurance company to have the cost of hiring the cleaning company incorporated into her settlement. The insurance company agreed to pay an additional \$11,000 for these costs. The attorney that helped Ms. James with her contractor dispute was then able to reach an agreement with the cleaning company for that amount. These additional proceeds, however, along with the rest of the insurance settlement, were still being held with Ms. James' mortgage servicer. Ms. James'

⁷⁴ See *supra* note 42.

attorney then contacted Ms. James' mortgage servicer and submitted the contractor's receipts and statement, the cleaning company's unpaid invoice, and the settlement statements from the WYO insurance company. After much discussion, the bank agreed to release the remainder of Ms. James' insurance settlement funds. Ms. James was then able to fully pay the cleaning company's invoice and hire a second contractor who agreed to finish her repairs for the remainder of her insurance settlement.

During Ms. James' time working with NYLAG, it became clear that she had trouble managing her bills and would benefit from financial counseling. Her monthly mortgage bill was approximately \$1,520 and she had relied on credit cards to pay the majority of her expenses. When Ms. James contacted NYLAG, she had roughly \$80,000 in credit card debt. With only Social Security to rely on, she had lapsed in her credit card payments and was receiving harassing telephone calls and letters from her creditors. Ms. James had seriously contemplated filing for bankruptcy. She was subsequently referred to a NYLAG financial counselor. The financial counselor was able to sit down with Ms. James, review her income and household expenses and come up with suggestions that would allow Ms. James to better manage her finances. While her recovery from the disaster still posed a significant financial hurdle, Ms. James was thus able to face it free of several interconnected legal obstacles and with a clearer plan for maintaining self-sufficiency.

CONCLUSION: AN ONGOING RECOVERY

This Article has described the experiences of one legal services organization in the aftermath of a major natural disaster. In relating NYLAG's efforts in Sandy's aftermath, it has been the authors' intention to identify notable issues and successful practices from SRU and its counterparts in the legal services community. We began by reaching out to legal services providers in other regions that had been through a major disaster recovery. In addition to their training on specific disaster-related legal issues, their advice to establish and maintain a presence on the ground in affected areas was prescient and critical. It was imperative to get to clients as early as possible in the storm's immediate aftermath—both at official FEMA sites and at other locations as informed by our ties with local communities. SRU also found tremendous value in the coordination among the larger legal services community across the New York City metropolitan area, including a very active email listserv,

roundtables on specific legal issues, and a proactive pro bono recruitment effort that began immediately after the storm.

NYLAG developed its SRU with an emphasis on holistic advocacy. Each SRU case handler, while typically focused on one or two areas of expertise in their past practice, is now capable of advising on a wide variety of disaster recovery legal issues. Additionally, we cultivated a detailed working knowledge of non-legal disaster relief programs, such as county and state home repair and recovery funds, as well as federal grant and loan programs. We continued to work with other legal services providers as the needs of our clients evolved, and we collaborated with local government, community organizations, and social services providers to integrate legal services into the broader disaster recovery effort.

SRU remains deeply engaged in the recovery process for New York City's and Long Island's Sandy victims, a process that continues to be slow and arduous for thousands of households. Issues related to immediate relief efforts, such as eligibility for FEMA benefits and SBA disaster loans, have given way to questions about long-term recovery and resiliency. Homeowners face looming deadlines to protect their interests in flood insurance claims and the costly question of whether and how high to elevate their houses, while the future of subsidized policy premiums seems uncertain. Tenants across affected areas are still waiting for repairs to their homes, some of which may be impossible to bring into compliance with updated building codes. At the one-year anniversary of the storm, residents awaited the rollout of state- and city-wide implementation of federal Community Development Block Grant funds. With a versatile, holistic project in SRU, NYLAG remains dedicated to disaster victims' recovery issues for as long as the need exists.

