

GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS
OFFICE OF THE LIEUTENANT GOVERNOR
DIVISION OF BANKING, INSURANCE AND FINANCIAL REGULATION

Order No. 2017-04

AMENDED EMERGENCY ORDER

WHEREAS, on September 6, 2017, the United States Virgin Islands was severely impacted by Hurricane Irma, a Category 5 windstorm that ravaged primarily St. Thomas and St. John; and

WHEREAS, thirteen days later on September 19, 2017, the United States Virgin Islands was severely impacted by yet another Category 5 windstorm, namely Hurricane Maria which ravaged primarily St. Croix; and

WHEREAS, the combined forces of Hurricanes Irma and Maria, made travel availability non-existent whether by air or by sea and further, left the Territory void of communications connectivity; and

WHEREAS, while the lack of travel availability and communications connectivity for approximately forty days after Hurricane Irma and about three weeks after Hurricane Maria made it extremely difficult for insurance companies to bring in claims adjusters, and made it difficult for claims adjusters to reach claimants, these conditions eased shortly thereafter, allowing claims adjusters to actively begin and complete the adjustment of claims throughout the Territory; and

WHEREAS, Section 51(a) of Title 22, Virgin Islands Code authorizes the Lieutenant Governor to serve as Commissioner of Insurance and the Division of Banking, Insurance and Financial Regulation ("DBIFR") pursuant to Section 35 of Title 3, Virgin Islands Code, is an administrative agency within the Office of the Lieutenant Governor, with a dual function of both insurance regulation and consumer protection; and

WHEREAS, the terms as used in this Order have the following meaning:

(1) "Adjusted" means the process of inspecting and investigating a claim and providing a recommendation of a final settlement option based on estimates of damages and insurance policies held;

- (2) "Aged claim" means a claim that was inspected and investigated by an adjuster in excess of thirty (30) days from the date of the claim filing; however, during the interim, no communication was made to the claimant of the need for additional information nor a denial or acceptance of liability has been made;
- (3) "Claimant" means a policyholder making a request for insurer remittance of payment due to loss incurred and covered under the policy agreement;
- (4) "No communication" means no written or verbal discourse between the independent adjuster and the claimant and the insurer or the claimant during the claim handling process;
- (5) "Notice" means an acknowledgment (either written or verbal) from the insurer to the claimant that a first-party filing has been received;
- (6) "Policyholder" means the holder of a written insurance contract (also known as insurance policy), who has the right to exercise the rights stated in the contract;
- (7) "Proof of claim" means any written evidence or documentation in the possession of the insurer, whether as a result of having been submitted by the claimant or obtained by the insurer in the course of its investigation, that provides any evidence of the claim and that reasonably supports the magnitude or the amount of the claimed loss; and

WHEREAS, this Order is being issued because the Commissioner of Insurance has found that while many claims have been adjusted by Independent adjusters and in-house adjusters throughout the Territory, the DBIFR has received numerous complaints from claimants about significant delays in the claim handling process; and

WHEREAS, more specifically, claims were inspected and investigated by an adjuster on behalf of the insurer in excess of thirty days ago from the date of the claim filing, yet no communication has been made to the claimant to explain the status of the claim or the reason for the delay; and

WHEREAS, it should be noted, this Order does not in any way affect the legislative intent of Section 228 of Title 22, Virgin Islands Code governing *Payment of Claims*, which is the final stage of claim handling; rather, this Order addresses omissions at the beginning stage of claim handling; and

WHEREAS, Section 228 provides "an insurer shall have thirty (30) calendar days from the date on which an agreement to settle is signed or a proof of claim had

been filed, whichever comes last, to make payment of all sums due under an insurance policy"; and

WHEREAS, many insurance claimants are also in need of the Federal Emergency Management Agency's ("FEMA") disaster assistance to cover dwelling and/or content damages not covered in their private insurance policy; and

WHEREAS, in accordance with Section 206.109 of Title 44 of the Code of Federal Regulation, FEMA will not duplicate benefits received from any other source; and

WHEREAS, Section 206.113 of Title 44 of the Code of Federal Regulation provides FEMA makes this determination by requiring insured applicants to provide documentation that identifies their insurance settlements or benefits before FEMA will consider their eligibility for categories of assistance that may be covered by private insurance; and

WHEREAS, Title 22, Virgin Islands Code does not provide a specific timeframe in which an insurer is required to acknowledge receipt of notification of a first party claim; and

WHEREAS, Title 22, Virgin Islands Code also does not provide a specific timeframe in which an insurance company must affirm or deny liability on all first-party property damage claim once an insurance claim is filed by a policyholder and the property inspected by an adjuster; and

WHEREAS, Title 22, Virgin Islands Code does not provide a time frame to notify claimants that more time is needed to determine whether a first-party property damage claim should be accepted or denied, or require insurers to provide the reasons that more time is needed and an estimate of additional time needed to establish liability; and

WHEREAS, other jurisdictions have a consumer bill of rights that require a specific time period for each process of claim handling and a similar Virgin Islands consumer bill of rights has not yet been enacted; and

WHEREAS, the DBIFR is currently developing Rules and Regulations ("Rule") governing the processing of claims for a first or third-party claimant which cannot be retroactively applied; and

WHEREAS, the purpose of this Order is to provide procedures for the expeditious and efficient settlement of first-party claimant's property damage claims; and

WHEREAS, there is an emergency need for the issuance of this Order, in the absence of an enacted consumer bill of rights and promulgated Rule and thus,

in the interest of first-party claimants in the Virgin Islands, the Commissioner of Insurance is executing this Order to safeguard and protect insureds in the Territory.

NOW, THEREFORE, pursuant to the authority of the Commissioner of Insurance, as provided in Section 54 of Title 22, Virgin Islands Code, it is hereby

ORDERED, that an insurer within fifteen (15) business days of receiving a notice of a first-party claim shall acknowledge, either verbally or in writing, receipt of the claim; and

FURTHER ORDERED, that an insurer within thirty (30) calendar days of an on-site inspection of first-party claim and the claimant submittal of required documentation in support of the claim being made shall accept or deny claim; and

FURTHER ORDERED, that if a determination cannot be reached in that thirty (30) days, an additional 15 days (which extends the period to forty-five days) may be permitted, if the insurer provides reasonable basis supported by specific information to the claimant and the DBIFR for the extension; and

FURTHER ORDERED, where an insurer has received and accepted the adjuster's final report or a sworn proof of loss or estimate, 30 days ago or more, the claim must be settled with fifteen (15) days or the insurer must submit written notice to the claimant with a copy to DBIFR, as to why a settlement cannot be made in fifteen (15) calendar days; and

FURTHER ORDERED, if settlement cannot be reached in that fifteen (15) days, the insurer, by notifying the claimant with a copy to the DBIFR, may request additional time to accept or deny the claim. The notification must set out the specific reasons the insurer requires additional time to investigate the claim; and

FURTHER ORDERED, that this Order applies only to residential claims filed because of damages caused by Hurricane Irma and Hurricane Maria in Year 2017; and

FURTHER ORDERED, that failure of an insurer to do so may result in administrative action by the Commissioner of Insurance; and

FURTHER ORDERED, that in accordance with Section 151 of Title 22, Virgin Islands Code, an insurer may request a hearing before the Commissioner of Insurance within 10 days of receipt of this Amended Emergency Order (December 21, 2017) to show cause why this Order should not remain in effect; and

FURTHER ORDERED, that a copy of this Amended Emergency Order shall be served on Property and Casualty insurers licensed and authorized by the Commissioner of Insurance to conduct insurance business in the United States Virgin Islands.

Dated: December 12th, 2017



A blue ink handwritten signature, appearing to read "Osbert E. Potter", written over a horizontal line.

Osbert E. Potter
Lieutenant Governor/
Commissioner of Insurance