

OWNERS, DEVELOPERS & MANAGERS

By James Burns, Esq., Conlee Whiteley & Michael Fortunato, Esq.

The how and when of filing your Sandy insurance claim

One year after Superstorm Sandy, many residents and business owners throughout the area have yet to receive the proper insurance compensation for incurred damages. Whether a proof of claim has been filed, or is still being contemplated, New Jersey property owners and homeowner associations should be aware of important deadlines for placing the insurance carrier on notice of a claim and/or instituting a lawsuit after denial of coverage. Policyholders who fail to comply with these deadlines risk losing their rights to recover from losses.



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The applicable deadlines vary greatly based upon the cause of the damage, and whether the claim will be filed under a flood policy or an all risk policy, which covers all damage un-

less specifically excluded. It is important to note that all risk policies typically exclude coverage for damage caused by flood.

The Proof of Loss

- A comprehensive, competently prepared Proof of Loss is the key to a successful claim. A Proof of loss is a formal, sworn statement which details the amount of money the insured claims it is owed under the policy. Before preparing a proof of loss, we strongly advise our clients to retain experts to perform an investigation of the property and determine, through the use of forensic analysis, the causation of damages and amounts owed under the policy. Wind damage in particular is often latent and only detectable by competent professionals. With looming deadlines, insureds should begin to assemble the proper team to determine the extent of their loss and to properly document these losses in a method acceptable to the insurance carrier.

Flood Policies

- Flood insurers issue the Standard Flood Insurance Policy (SFIP), which is administered by the federal government under National Flood Insurance Program (NFIP). Courts have little flexibility to interpret flood policies in favor of the insured, as the policies are set forth in federal statutes and regulations. Therefore, strict compliance is required.

- SFIP policies require that a sworn proof of loss, detailing the amount and scope of flood damage, be submitted within 60 days of the occurrence. Because of the volume of claims related to Superstorm Sandy, however, FEMA, on October 1, 2013, extended the time to submit a proof of loss until April 28, 2014. This deadline is fixed and flood policyholders must meet it or lose their claims forever.

- The SFIP further gives policyholders one year from the date of their claim's full or partial denial to file a lawsuit.

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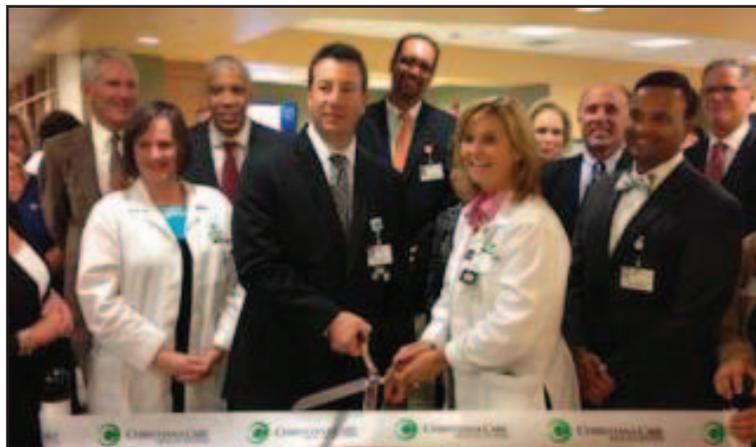
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DC office recently partners with JMT for charity Skanska USA completes Wilmington Hospital's ICU

WILMINGTON, DE — Skanska USA project executive **Lyle Frederick** joined executives from Christiana Care Health System to ceremoniously cut the ribbon for the Wilmington Hospital's Intensive Care Unit (ICU). The ribbon cutting ceremony officially marked Skanska's completion of the hospital's new ICU, and represents a key step for Skanska in the Wilmington Hospital expansion project, which will help Christiana Care Health System provide superior, advanced healthcare to the Delaware region.

Once complete, the new 386,000 s/f facility will include a new 10-story patient tower and plaza that will feature new mechanical facilities, 16 treatment rooms in the new emergency department, three new operating rooms and 30 new patient rooms, with the flexibility to fit out more tower floors for future growth. The project also boasts a new Gate-



Project Executive Lyle Frederick joined executives from Christiana Care Health System to ceremoniously cut the ribbon for Wilmington Hospital's Intensive Care Unit (ICU).

way Medical Office building and Junior Board Healing Garden.

In other news, Skanska USA's Greater Washington D.C. office recently partnered with JMT to participate in the annual Canstruction event to benefit the Capital Area Food Bank. The team created a model of the Washington Mon-

ument and its iconic reflecting pool using 2,500 cans of food. Canstruction is designed to aid the Capital Area Food Bank in collecting food, raising money, and spreading awareness to combat child hunger.

As a result of their unique and creative design, Skanska and JMT received an honorable mention for design theme. ■

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In the context of Superstorm Sandy, it is important to note that the extension given by FEMA for filing proofs of loss does not alter this deadline. Therefore, if full or partial denial of a claim was made soon after Sandy, policyholders still face a deadline by which to file suit, even with FEMA's notice extension.

All Risk Policies

• All risk policies vary depending on the particular carrier and type of coverage: there is no one standard deadline. In disputes arising from these policies, New Jersey courts have some discretion to interpret the policies in favor of the insured.

• Notice requirements vary for claims made under most policies, therefore a thorough review is required. The policy language often contains a deadline by which to notify the insurance carrier of a loss sustained due to a covered occurrence. While some policies may state that notice must be provided a certain number of days after the occurrence, others may require an insured to provide notice "as soon as practicable." A sworn proof of loss will subsequently be required within a specific timeframe, be it set by the policy language or through a separate request by

the insurer. Normally, these policies will state that such notice requirements must be adhered to or else the policyholder will forfeit the right to file suit.

• Previously filed-or even closed- claims can generally be reopened if additional proof of damage is found.

• Policyholders should make every good faith effort to comply with these notice provisions. However, New Jersey courts have routinely prevented carriers from using technicalities to deny the claimants their rights under the policy and will only bar subsequent legal action against the carrier only when there has been a breach of the notice provision and the carrier has suffered appreciable prejudice. Two factors are considered in determining the presence of appreciable prejudice: 1) whether substantial rights have been irretrievably lost by the failure of the insured to notify the carrier in a timely fashion; and 2) whether the carrier has been prejudiced in its likelihood of success in defending against the claim.

• In New Jersey, actions arising from insurance policies are subject to a six year statute of limitations, running from the date of the occurrence. If the policyholder does not file a lawsuit within this time period,

the insurance company may bar recovery by citing the statute of limitations period as a defense. Insurance companies, however, may shorten this window to as little as one year through express provisions in the policies themselves, such as that contained in the SFIP.

Insureds in New Jersey need to recover fully under insurance policies in order to rebuild. It is vital, however, that they work with the appropriate personnel to determine causation, develop a thorough proof of loss, and navigate the applicable notice requirements and deadlines.

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Awarded for their dedicated years of service Willow Construction, LLC honors employees at picnic



EASTON, PA — Willow Construction held its annual company picnic at Idlewild Park in Easton.

Several employees were honored with awards for their dedicated years of service.

Five years of service: **Crystal Dadds**. Ten years of service: **Jack DeVaughn** and **Scott Ditman**. Twenty-five years of service: **Larry Willis**. Thirty years of service: **Mike Detwiler**. ■

Transwestern hires Polise as VP of construction management

PARSIPPANY, NJ — Transwestern announced that well-regarded industry professional **Joseph Polise** has joined the firm's New Jersey office as vice president of construction management. In this role, Polise will work closely with Transwestern's property management and leasing teams to oversee Transwestern's construction management assignments throughout the Northeast region.

"Joe is a consummate professional with immense knowledge of the commercial real estate construction landscape," said **James Postell**, principal of Transwestern's New Jersey office. "With more than 10 years of experience and 12.5 million square feet of real estate projects under his belt, Joe is poised to make an immediate impact on our business, offering expert oversight on construction projects and providing clients with the most cost-effective engineering plans."

Polise is an expert in providing construction cost estimating and value engineering services for office, retail and industrial assignments. At Transwestern, he will support the firm's acquisition teams in the architectural, engineering and construction materials review of projects during the due diligence period, as well as assisting leasing personnel

with the review and negotiation of construction costs on behalf of clients. Polise will also be responsible for supporting the growth of Transwestern's construction management division through business development.

"I'm excited to be joining such a highly accomplished firm like Transwestern and for the opportunity to build and grow the construction management practice the same way the company continues to strengthen its reputation - through a steadfast dedication to providing clients with best-in-class service and tailored solutions," said Polise. "I'm looking forward to being a part of the Northeast team and supporting the region's growth strategy to enhance its strong position in the market."

Polise joins Transwestern from Avison Young, where he most recently served as director of construction for the firm's New York City office. Previously, Polise was also a senior project manager for the Walsh Company in Westchester County, NY, where he contributed to the firm's growth into one of the top-producing project management companies in the region. An architect by trade, Polise earned a bachelor's degree from Montclair State University in environmental science, with a concentration in urban planning. ■