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CITY BAR

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Via Email

The Honorable Scott Stringer
Office of the Comptroller
1 Centre Street, Room 517
New York, NY 10007

Re: Recommendations to Improve the Claims Process: Learning from the South Ozone Park Sewer Damage Situation

Dear Comptroller Stringer:

Last November, a collapsed City sewer pipe caused raw sewage to back up into and flood more than 120 homes in South Ozone Park, Queens. Although the New York City Department of Environmental Protection took responsibility for the widespread damage,¹ and your office committed to reviewing claims quickly and compensating residents,² circumstances more than a year later have highlighted issues with the claims process that have led to delays and other problems in making residents whole for the losses they have suffered.

¹ See *Testimony of Vincent Sapienza, Commissioner, New York City Department of Environmental Protection, before the New York City Council Committee on Environmental Protection*, NYC ENVTL. PROT. (Dec. 11, 2019), <https://www1.nyc.gov/site/dep/news/12-11a/testimony-vincent-sapienza-commissioner-new-york-city-department-environmental-protection-> (all websites last visited March 11, 2021).

² Katie Van Syckle, *Raw Sewage Flooded Their Homes. They Finally Know Why.*, N.Y. TIMES (Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/nyregion/queens-sewer-flooding.html>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

The Environmental Law Committee of the New York City Bar Association learned of multiple instances in which people whose homes were damaged by the sewage backup have faced protracted delays in having their claims processed, and such problems have also been publicly reported. As we look further into this issue, we are becoming increasingly concerned about what appear to be systemic delays, inequities, and lack of transparency in the claims process generally. The claims process must be improved, not only for the sake of the hundreds of South Ozone Park residents who have been gravely impacted by this calamity, but also for the many New Yorkers who will face similar circumstances in the coming years as the City's aging infrastructure collides with the impacts of climate change, including more frequent and severe extreme weather events, heat waves, sea level rise, and tidal flooding.

Resilience depends not only on maintaining our infrastructure and preparing it for climate change but also on having processes in place that protect and compensate residents when their lives are upended by infrastructure failures or climate-related events. The communities that are likely to bear the brunt of these impacts are disadvantaged communities, including low-income communities and communities of color.³ Members of these communities are far less likely to have the resources to sustain themselves and their families while they wait for compensation; they are also less likely to have access to lawyers and other professionals who can assist them through the claims process. They rely on a well-functioning and navigable process to assure that they can repair and return to their homes.

This letter highlights some problems with the current process—through the lens of the experience of claimants in the South Ozone Park community—and then identifies some potential solutions. We hope you find these recommendations helpful and that you will accept them in the spirit with which they are offered.

OVERVIEW OF PROBLEMS WITH THE CLAIMS PROCESS

The claims process has posed a variety of challenges for claimants in the South Ozone Park community. Detailed below are some examples of problems claimants have encountered.⁴

³ See REG'L PLAN ASS'N, UNDER WATER: HOW SEA LEVEL RISE THREATENS THE TRI-STATE REGION (Dec. 2016), <https://rpa.org/uploads/old-site/library.rpa.org/pdf/RPA-Under-Water-How-Sea-Level-Rise-Threatens-the-Tri-State-Region.pdf>; N.Y.C. ENVTL. JUSTICE ALL., NYC CLIMATE JUSTICE AGENDA: STRENGTHENING THE MAYOR'S ONENYC PLAN (Apr. 2016), https://www.nyc-eja.org/wp-content/uploads/2017/10/CJA_041916.pdf; Chris Sellers, *Storms Hit Poorer People Harder, from Superstorm Sandy to Hurricane Maria*, THE CONVERSATION (Nov. 19, 2017, 9:26 PM EST), <https://theconversation.com/storms-hit-poorer-people-harder-from-superstorm-sandy-to-hurricane-maria-87658>; VINCANNE ADAMS, MARKETS OF SORROW, LABORS OF FAITH: NEW ORLEANS IN THE WAKE OF KATRINA (2013); see also N.Y. State Dep't of Fin. Servs., Insurance Circular Letter No. 15, Climate Change and Financial Risks (Sept. 22, 2020), https://www.dfs.ny.gov/industry_guidance/circular_letters/cl2020_15.

⁴ These examples are in part drawn from interviews that Professor Natalie Bump Vena, Queens College Department of Urban Studies, has conducted since June 2020 with 28 different households affected by the sewage backup. (Professor Vena is a non-voting affiliate member of the Environmental Law Committee.) After Professor Vena brought these issues to our committee's attention, two committee members took on pro bono representations of some of the South Ozone Park claimants. Another committee member's employer, New York Lawyers for the Public Interest, is involved in coordinating pro bono assistance for the residents. This letter was approved by a majority of the committee even without these members' support. See also Rachel Vick, *Lawyers for Ozone Park Flood Victims Demand Immediate Action from Comptroller*, QUEENS DAILY EAGLE (Dec. 21, 2020), <https://queenseagle.com/all/lawyers-for-ozone-park-flood-victims-demand-immediate-action-from-comptroller>;

- **Gathering documentation for claims.** Last winter, community members had trouble assembling all of the required paperwork documenting their losses, including bids from contractors, during the short timeframe (90 days) provided to do so. Many were displaced from their homes and living in hotels during that time. Residents needed more personal advice and support in assembling the best evidence to support their claims for damage to real property and to personal property.
- **Unclear guidance regarding the scope of claims.** Residents affected by the sewage backup received conflicting advice regarding how to file their claims. As an example, residents received different guidance as to whether homeowners and their adult relatives living in the same home should submit a joint claim or separate claims. At least one homeowner who submitted a single claim for all adult relatives has since learned that settlement calculations have not included the belongings of each victim.
- **Absence of clear procedures for amending claims.** Affected residents who may need to amend their original claims lack access to information on how to do so. In the case of the South Ozone Park residents (or residents who may experience similar water damage in the future), the possibility of amendment is especially important, because residents are concerned that dangerous mold is growing in their basements, and they would like to add the costs of mold inspection and, if necessary, mold remediation to their claims.
- **Presentation of settlement offers.** It appears that many residents may have accepted inadequate offers because the ability to challenge settlement determinations is not made clear to claimants and the lengthy delays may have forced them to simply accept what was offered.⁵ The offer letters themselves do not include directions for settlement negotiation. And each letter states in bold, “This offer will remain open for 30 days; if

Max Parrott, *South Ozone Park Fights for Fair Payment*, QUEENS CHRON. (Dec. 3, 2020), <https://bit.ly/3bC8iL7>; Sydney Pereira, *One Year After Queens Sewage Flood, Some Residents Are Still Seeking Compensation*, GOTHAMIST (Nov. 29, 2020); Natalie Bump Vena & Aracelia Cook, *South Ozone Park, After the Flood: The City Has Failed this Working-Class Black Neighborhood*, N.Y. DAILY NEWS (Oct. 5, 2020), <https://www.nydailynews.com/opinion/ny-oped-south-ozone-park-flood-20201005-u3fl42mytign7decttxz6ikpne-story.html>; Dan Krauth, *7 On Your Side Investigates: Something Stinks in Queens*, EYEWITNESS NEWS ABC7NY (Feb. 26, 2020), <https://abc7ny.com/7-on-your-side-investigates-sewage-pipe-queens/5968945/>.

⁵ We note that, at the one year anniversary of the flooding, your office indicated that 86 of 101 claims, or about 85%, had been offered settlements, with 61 claimants receiving \$755,012. See Letter from N.Y.C. Office of the Comptroller to Elected Officials (Nov. 24, 2020); see also Sydney Pereira, *One Year After Queens Sewage Flood, Some Residents Are Still Seeking Compensation*, GOTHAMIST (Nov. 29, 2020), <https://gothamist.com/news/one-year-after-queens-sewage-flood-some-residents-are-still-seeking-compensation>. We are concerned, however, that these settlement numbers may not fully reflect—or fully compensate the residents for—the harms and damages they have sustained. See Rachel Vick, *Lawyers for Ozone Park Flood Victims Demand Immediate Action from Comptroller*, QUEENS DAILY EAGLE (Dec. 21, 2020), <https://queenseagle.com/all/lawyers-for-ozone-park-flood-victims-demand-immediate-action-from-comptroller> (quoting attorneys for residents as stating that settlement offers were for a “fraction of the actual damages”); Max Parrott, *South Ozone Park Fights for Fair Payment*, QUEENS CHRON. (Dec. 3, 2020), <https://bit.ly/3bC8iL7> (indicating that advocates and residents disputed the number of claims).

you do not respond within 30 days, the offer will be deemed rejected,” which may lead recipients to believe they must accept the offer within 30 days or lose the chance of any reimbursement from the City.

- **Lack of access to legal counsel.**⁶ Community members who lack legal training, familiarity with the claims processes, and access to necessary information such as the methodology for determining offers are at a disadvantage at what in effect is an adversarial proceeding.⁷ Especially in light of the many challenges faced by claimants in these types of proceedings, claimants need access to counsel or other independent assistance to help them navigate the claims process. As an example of the type of challenge confronted by claimants, most South Ozone Park residents did not understand that they could request copies of their 50-h hearing transcripts. As a result of information provided at a “know your rights” town hall organized by the South Ozone Park Sewage Legal Assistance Project, many residents learned about the availability of the transcripts, and some were able to obtain them on their own.⁸
- **Barriers for non-English speakers.** Residents who do not speak English have faced greater hurdles in attaining just settlements, as they struggle to navigate an already opaque bureaucratic process in a foreign language.
- **Delays in compensation.** Many South Ozone Park residents only received offers from the Comptroller’s office during the Fall following the sewage backup—so, approximately one year after the damage. An investigation by ABC 7 Eyewitness News reviewed more than 100 previous claims related to sewage accidents filed with the City’s Department of Environmental Protection and found that on average it takes one year for people to be reimbursed but that in some cases residents waited up to three years.⁹ Residents should not be made to wait for up to three years to obtain reimbursement to start mitigating the damage to and/or rebuilding their homes. Even a wait of one year is too long for low- and middle-income families living in New York City.

RECOMMENDATIONS

In light of the ongoing problems with the claims process that the South Ozone Park residents have experienced, we urge your office to implement the following changes to improve the claims process:

⁶ As discussed *infra*, we recognize and applaud your acknowledgement of the need for claimants to have legal counsel, and we offer our assistance in implementing this joint recommendation.

⁷ New York Lawyers for the Public Interest and several pro bono firms have been assisting numerous affected families as part of the [South Ozone Park Sewage Legal Assistance Project](#).

⁸ This information is based on ongoing community outreach by Professor Vena. The South Ozone Park Sewage Legal Assistance Project town hall took place on September 3, 2020.

⁹ Dan Krauth, *7 On Your Side Investigates: Something Stinks in Queens*, EYEWITNESS NEWS ABC7NY (Feb. 26, 2020), <https://abc7ny.com/7-on-your-side-investigates-sewage-pipe-queens/5968945/>.

- **Establish a system for independent assistance to claimants.** Perhaps the most impactful change to the claims process would be providing claimants with access to a professional who can counsel, assist, and advocate for them. We are aware that you have proposed the creation through legislation of an “Office of Claimants” that would inform and represent New Yorkers in the civil claims process. We are heartened that your office recognizes the need for legal counsel or other professional assistance to be more widely available to claimants. As you develop this proposal, we would urge you to ensure that any such office or service operate independently from the Comptroller’s office. As noted above, these are adversarial proceedings and claimants should not feel they must rely on the Comptroller’s office to represent and defend their interests.

There are several models of assistance that could be followed. First, your office could assign housing counselors to New Yorkers who suffer property damage as a result of failures in municipal infrastructure. This service could be modeled on the Build It Back program, which was implemented to address the damage wrought by Hurricane Sandy. Under the Build It Back program, housing counselors have advised homeowners and advocated on their behalf with contractors, mortgage companies, and others, so that homeowners could save and rebuild their homes. In cases like the South Ozone Park sewage backup, an independent organization would provide housing counselors to assist residents in filing their claims with the Comptroller’s office. Housing counselors would also advise them in settlement negotiations, and, if necessary, advocate on their behalf.

Alternatively, an office or officer could be appointed to represent claimants’ interests. This person would negotiate with the Comptroller’s office, assist community members in accessing necessary information, and ensure that the process proceeds fairly without taking advantage of claimants’ lack of formal training, financial distress, or personal trauma. One possibility is that this role could be filled by the Deputy Public Advocate for Infrastructure and Environmental Justice.

Another possibility is that the Comptroller could appoint volunteer attorneys to represent the claimants’ interests throughout the claims process, in much the same way that the U.S. Supreme Court appoints attorneys to represent positions that have been abandoned on appeal.

The City could also look to New York City’s Universal Access to Counsel law¹⁰ and the Office of Civil Justice as models for providing legal assistance to claimants. As in other areas of civil justice such as workers rights, landlord-tenant matters, and immigration, the City could fund outside legal providers to counsel people navigating the claims process.

It also could be beneficial to establish an independent entity as an ombudsperson to provide oversight and serve as a point of contact for claimants who have questions

¹⁰ N.Y.C. ADMIN. CODE §§ 26-1301–26-1305.

about the process or encounter problems. While such an entity would not itself provide necessary legal assistance, it would provide a layer of accountability and a mechanism to identify recurring issues that claimants are encountering.

- **Establish clear procedures to allow amendment of claims.** Claimants should have access to specific forms for amending their original claims for damages arising from the event at issue as well as any delay in the settlement process.
- **Change the language used in settlement offers to avoid any coercive effect.** The language should make clear that the claim itself does not expire after 30 days.
- **Increase transparency of settlement offers.** Claimants should be provided access to information about the basis of settlement offers, i.e., what was and was not included.
- **Prepare guidelines that describe the claim adjustment process and methodology.** These guidelines should be made publicly available on the claims website. The inclusion of a flowchart to illustrate the steps of the process would be useful.
- **Provide access to claimants' records.** Information about the categories of records to which claimants are legally entitled upon request should be made easily accessible to claimants on, for example, the claims process website and on claim forms. Transcripts and other records in claimants' files should be made available, and promptly delivered to claimants, upon request.
- **Increase the availability of translation services.** Translation services should be freely available to claimants who do not speak English as their first language. In addition, information about access to translation services should be made a prominent feature of the claims website.
- **Provide claimants with regular updates on the status of their claims.** Claimants should receive monthly status updates on their claims via mailed letters. The Office of the Comptroller should also design an online tracking system so that every claimant can check their claim's status at their convenience.

We urge your office to improve the claims process to ensure that New York City residents, like those in South Ozone Park who were victims of the horrific sewage backup last year, can navigate the claims process in an efficient and timely manner, and obtain necessary and sufficient compensation to remediate damage to and/or rebuild their homes.

The Environmental Law Committee stands ready, willing, and able to work with your office to improve its claims handling policies and practices, and to help your office implement the recommendations outlined above. We can be reached at bethany.davisnoll@nyu.edu and margaret.barry@arnoldporter.com.

Respectfully,

L. Margaret Barry, Co-Chair

Bethany Davis Noll, Co-Chair

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