The Virgin Islands Consortium

Federal Court Orders Scotiabank, Oriental to Produce Records for Half of USVI Borrowers in Hurricane Insurance Case

Nine years after Irma and just days before Maria's anniversary, the court rejected an effort to confine discovery to borrowers who filed damage claims and ordered records from a broader proposed class, including files tied to disputed insurance coverage.

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An archival image shows Scotiabank's former branch at Havensight on St. Thomas. The bank is at the center of a long-running federal lawsuit over force-placed insurance charged to USVI mortgage borrowers after the 2017 hurricanes.

Nine years after Hurricanes Irma and Maria exposed a bitter dispute over force-placed insurance on Virgin Islands homes, a federal magistrate judge has ordered Scotiabank and its successor entities to turn over records covering half of a proposed class of borrowers — including people who never filed hurricane damage claims — as a long-running lawsuit moves deeper into discovery.

In a September 12 order, U.S. Magistrate Judge G. Alan Teague granted in part a motion to compel filed by 11 Virgin Islands homeowners in Belardo et al. v. The Bank of Nova Scotia et al. The court ordered the defendants to produce a 50 percent sample of all residential mortgage borrowers in the territory who were charged for force-placed insurance between August 1, 2017 and September 30, 2018, rather than restricting the production to borrowers who made claims after the two hurricanes.

The ruling is a significant procedural development in the proposed class action, but it is not a determination that Scotiabank failed to insure the properties, nor has the court certified a class. The order governs pre-certification discovery — the information the plaintiffs may obtain as they attempt to establish whether the lawsuit meets the requirements to proceed on behalf of a broader group of Virgin Islands borrowers.

Force-placed insurance is coverage a lender may obtain when a mortgage borrower does not maintain the hazard insurance required by the loan. The cost is generally charged to the borrower, while the coverage principally protects the lender's financial interest in the mortgaged property. The dispute in this case centers on plaintiffs' allegation that borrowers continued to be charged premiums even though valid force-placed coverage had not been secured when Irma and Maria struck the territory in September 2017. Scotiabank emphatically disputes that allegation and maintains that coverage existed through Integrand Assurance Company.

Court Refuses to Limit Discovery to Borrowers Who Filed Claims

The plaintiffs' operative complaint defines the proposed class broadly: Virgin Islands residential borrowers whose mortgages were owned by Scotiabank or serviced by Scotiabank de Puerto Rico and who were charged for lender-placed insurance beginning August 1, 2017. A narrower proposed subclass consists of borrowers who were also seeking payment for property damage caused by Irma or Maria.

Scotiabank and Oriental Bank, which is now identified in the case as successor by merger to Scotiabank de Puerto Rico, sought to confine the discovery production to people who actually submitted property-damage claims. The defendants argued that all of the named plaintiffs had filed claims and that there was no representative plaintiff belonging solely to the broader group of borrowers who paid for force-placed insurance but never made a hurricane claim.

Judge Teague rejected that approach, finding that no order had narrowed the proposed class and that questions about the eventual class definition belong at the class-certification stage. The court also noted that the plaintiffs seek more than reimbursement for hurricane damage; their allegations include premiums they contend were paid for insurance that was not obtained, along with other forms of damages. For discovery purposes, the defendants therefore must include borrowers whether or not they filed storm-damage claims.

The production covers borrowers charged for force-placed insurance from August 1, 2017 through September 30, 2018, while the underlying documents themselves are limited to the period from January 1, 2017 through December 31, 2018.

Defendants Wanted Roughly 10 Percent; Plaintiffs Sought Much More

The parties were also far apart over how many borrower files should be produced. The defendants initially estimated that 202 borrowers had submitted hurricane-related claims but later revised that figure to 166 separate borrowers. Plaintiffs argued that, given a proposed class of roughly that size, they should receive all borrower files; if the court required sampling, they asked for at least 60 percent.

The defendants proposed approximately 10 percent. Using their 166-borrower figure, that would have meant 16 loan files. Because eight files connected to the named plaintiffs had already been produced, only eight additional randomly selected files would have been required under that proposal.

Judge Teague concluded that the 166 figure likely does not represent the full proposed class because it counts borrowers who submitted claims but does not account for people who paid force-placed insurance premiums and never submitted hurricane claims. The actual number of borrowers covered by the proposed class is therefore not yet known, the court said. Rather than allow that uncertainty to stall discovery, Judge Teague settled on a 50 percent sample of the entire proposed class, not merely half of the borrowers who filed hurricane claims. Plaintiffs may seek additional discovery if that sample later proves inadequate.

The documents the parties had already agreed could be included are extensive: mortgage agreements and notes; servicing and payment records; escrow analyses; notices involving insurance cancellation or lapse; records showing placement and cost of force-placed insurance; insurance certificates and policies; hurricane-damage claims and adjuster reports; and borrower correspondence concerning coverage, claims, servicing and disaster relief.

Privacy Laws Do Not Block Production, Court Rules

Scotiabank and Oriental had also argued that federal and Virgin Islands financial-privacy laws limited their ability to disclose information belonging to borrowers who are not currently plaintiffs. They cited the federal Gramm-Leach-Bliley Act and Title 9, Section 6 of the Virgin Islands Code, which restricts unauthorized disclosure of confidential banking information.

The court disagreed that either statute barred the discovery. Judge Teague found that federal law contains an exception allowing financial institutions to respond to judicial process and concluded that producing records pursuant to litigation likewise constitutes disclosure to someone “authorized by law” under Virgin Islands law. At the same time, the judge recognized the privacy interests involved and ordered the records to remain subject to an existing protective order.

The ruling also permits plaintiffs' attorneys to contact borrowers who are not currently named in the suit. Their initial contact must be made by mail, however, and no additional contact may occur until seven days after the correspondence would likely have been received.

Insurer Dispute Moves to Center of Discovery

Perhaps the most consequential portion of the order concerns Integrand Assurance Company and the question of what insurance coverage actually existed when the hurricanes struck.

According to the plaintiffs, Scotiabank previously obtained force-placed coverage for Virgin Islands mortgages through a master policy with American Security Insurance Company. They allege that when Scotiabank changed its mortgage servicer to Scotiabank de Puerto Rico on August 1, 2017, that policy ended and no valid replacement coverage was in effect, even though borrowers continued to be charged premiums.

The defendants tell a sharply different story. Scotiabank maintains that it had an insurance policy with Integrand carrying a force-placed-insurance endorsement and that Scotiabank de Puerto Rico submitted monthly schedules of properties to broker Marsh Saldana Inc., which in turn submitted the information to Integrand. According to the defendants, endorsements were issued and premiums were paid, providing coverage beginning August 1, 2017.

That arrangement later generated a separate fight between Scotiabank and Integrand. On February 16, 2018, Integrand disputed coverage for Scotiabank's force-placed claims for August and September 2017. Integrand then filed a declaratory-judgment lawsuit in Puerto Rico Superior Court on March 19, 2018. Scotiabank has maintained that the very existence of that litigation demonstrates it had secured coverage and that Integrand subsequently attempted to deny or rescind it. The Puerto Rico case was never decided on the merits because Integrand was later declared insolvent and placed into liquidation.

The plaintiffs sought communications among Scotiabank, Integrand and Marsh, along with records from the Integrand policy and the Puerto Rico lawsuit, arguing that the materials could show what the defendants knew about the existence and scope of coverage. Scotiabank argued that it had already produced documents proving coverage and characterized further discovery into the Integrand litigation as unnecessarily broad and burdensome.

Judge Teague ruled that the underlying question of whether force-placed coverage had actually been secured is “at center stage” in the Virgin Islands case. He ordered the defendants to respond to discovery requests concerning communications among Scotiabank, Integrand and Marsh about the nature and scope of coverage, the Integrand policy itself and the Puerto Rico litigation. The court did not decide who is correct about the disputed insurance; it determined that the information is sufficiently relevant to be discoverable.

Litigation Dates Back to VIC's 2018 Coverage

The underlying dispute surfaced publicly within months of the hurricanes. The Consortium reported in February 2018 that Daryl Richards and Loretta Belardo had filed an earlier proposed class action against Bank of Nova Scotia over the handling of force-placed hurricane insurance claims. That lawsuit, filed February 14 as Richards v. Bank of

Nova Scotia, was dismissed the following month.

Belardo, Richards and a larger group of homeowners then brought the current action in March 2018. The operative complaint now includes 11 named plaintiffs and alleges violations of the federal Real Estate Settlement Procedures Act along with Virgin Islands claims including breach of contract, consumer-protection violations, misrepresentation, conversion and negligence.

The case survived a major challenge in October 2024 when then-District Judge Wilma Lewis granted only part of the defendants' motion to dismiss. She dismissed the breach-of-contract and implied-good-faith claims against Scotiabank de Puerto Rico and the unjust-enrichment claim against Bank of Nova Scotia, while denying the effort to dismiss the remaining claims. That ruling likewise did not determine whether the allegations were true; it found that most of them were sufficiently pleaded to proceed.

The case now remains a proposed class action. Judge Teague's September 12 order does not certify a class, award damages or resolve the core dispute over whether the mortgages were validly covered when the hurricanes struck. What it does is substantially widen the evidence available before the class-certification stage, giving the plaintiffs access to a much larger cross-section of borrower records and to communications surrounding the disputed Integrand coverage.

Scotiabank and Oriental were ordered to supplement or otherwise respond to the required discovery within 30 days of the September 12 order.