SNUG SPOT
MEDIATION

Teaching Note

By necessity, successful mediation of this case will have to involve integrative solutions. The potential damages are high, and cash is in short supply. In a nutshell, the dispute is between a condominium owner, Loren Lichter against the owner of Snug Valley, a 6-unit condominium building, Sumptuous Villas Corp, and its architect/general contractor, Sam Vanderman. Loren Lichter is the only unit purchaser; they had purchased during the construction phase and moved in as soon as their unit was finished.

In the aftermath of several rainstorms, a month after Snug Valley's completion, its basement level flooded, ruining the common area laundry machines and Lichter's home office and personal property in the lower level. Lichter filed claims against Sumptuous Villas and Sam Vanderman for $1+ million, to cover the loss of the damaged property, diminished value of their unit (assuming the lower level can no longer be used for living/office space), misrepresentation regarding the building's habitability, and emotional distress.

The condominium association (of which Lichter and Sumptuous Villas were the only members) had purchased insurance, but the insurer has denied the claim based upon the building's defects. The insurer's investigator found that Snug Valley was constructed at the base of a hill, with ground floor units below grade, and the basements even lower. The city's normal storm drainage was not designed to protect below-grade construction in heavy rains. The insurance company maintained that had these flaws been disclosed in the insurance application, they would not have issued the policy.

Based in part upon the insurer's report, Lichter's claims against Sumptuous Villas and Vanderman are for negligence in the design, location, and construction of the Snug Valley condominiums. (As owner of five units, Sumptuous Villas holds five out of six condominium association votes, and chose not to sue itself.) Vanderman and Sumptuous Villas deny all allegations of negligence.

The problem hints at possible solutions that would allow Lichter to move into one of the upper-level condominiums (with a safe, above-surface office space), trading their lower-level unit in. While Lichter surely suffered losses, their out-of-pocket losses are more modest, and Vanderman can cover some (though not all). It seems that the condominium association and Vanderman may have a legitimate claim against the building's insurer, which is now denying coverage. Vanderman would like Lichter to sign over the right to proceed against the insurer. Another possible solution might be for Vanderman to pay some of the sales proceeds from other units when they are eventually sold. The reader may note that I am leaning heavily on Vanderman's liability. That is because Vanderman's confidential facts suggest some fault in the building design and failure to properly account for the risks of lower elevations.

The confidential information does suggest that both parties now see the other as "greedy." Vanderman will want to see that Lichter's losses are real, not just an effort to exploit the situation. Lichter will want to understand why the developer Vanderman is not rolling in profits. It should be helpful for Vanderman to express regret for the flooding, and assurance that they were not aware of the problem when Lichter bought their unit. The mediator's ability to facilitate communication, and empathy for the other's plight, will improve the likelihood of resolution.

I hereby confess that I have only used this simulation once, in a workshop for mediators in New Zealand's Building and Housing mediation program. I remember it working well, but I am sorry to report that I do not remember the range of creative solutions found.