

IN RE:	§	IN THE DISTRICT COURTS OF
	§	
HURRICANE IKE	§	
	§	
RESIDENTIAL PROPERTY	§	
	§	
CLAIM LITIGATION	§	JEFFERSON COUNTY, TEXAS

STANDING PRETRIAL ORDER CONCERNING HURRICANE IKE
RESIDENTIAL PROPERTY CLAIMS

After consideration of pretrial issues and discussion with counsel representing claimants and counsel representing insurance carriers, agents, adjusters, independent adjusting firms and individual defendants, the undersigned Judges of Jefferson County, Texas find that pretrial matters should be expedited for the efficient handling of insurance and property damage claims resulting from Hurricane Ike.

ACCORDINGLY, IT IS ORDERED:

- A. This Order shall apply to all lawsuits filed on or after September 15, 2008 in the District Courts of Jefferson County, Texas wherein any policyholder (the "Plaintiff Insured") asserts a claim arising from damage to property or loss of business income caused by Hurricane Ike against an insurance carrier which issues insurance policies for property (the "Insurance Carrier"), an insurance agent who sold insurance for properties or businesses (the "Insurance Agent") or insurance claims adjuster (the "Insurance Adjuster"), or their employees, agents, representatives or third party administrators (all sometimes collectively referred to as "Defendants"); and
- B. Immediately upon the filing of this Order, the District Clerk shall post this Order on the Jefferson County District Courts' website. Any Plaintiff who is aware of this Order shall attach a copy of this Order to its Original Petition or otherwise send a copy of this Order to any party, if pro se, or to such party's counsel of record.
- C. Within one hundred (100) days after the Residential Insurance Carrier makes an appearance in the lawsuit or the date of this Order, whichever is later, all parties are Ordered to agree on a mediator and mediation date. However, the mediation can be set to occur outside of this time period. Once the parties have agreed on a mediator and mediation date, they shall notify the Court by filing the attached Mediation Order (Exhibit "A"). If the parties make an agreement around the timing in this provision, the parties must obtain approval of their agreement from the Court.
- D. Immediately upon the filing of the Residential Insurance Carrier's Original Answer, the case will be abated until (1) 30 days after the date of the letter from the mediator declaring an impasse or (2) notice by any party that the party desires to unilaterally end the abatement period applicable to a particular case 30 days from the date the notice is received by the opposing party. The abatement period will apply to all Court ordered deadlines or Rule 190 Discovery deadlines. The abatement period will not apply to any statutory deadline, interest or penalties

that may apply under any statutory code or law. The parties may send written discovery during the abatement time period; however, the responses and objections to those discovery requests will not be due until 30 days after the earlier of an impasse letter from the mediator or a party's termination of the abatement period. It is the intent of this Order that if a party elects to participate in mediation or any other provisions of this Order, or elects to opt out, such actions alone will not affect any party's statutory, legal or contractual rights.

- E. Furthermore, within 60 days of the filing of the Insurance Carrier's Original Answer or the date of this Order, whichever is later, the parties will use their best efforts to exchange information and documentation pertaining to the residence, to the extent same exists, including the following: Expert Reports, Engineering Reports, Estimates of Damage or repairs; Contents Lists for contents damage claim; Photographs; Repair Receipts or Invoices; Flood claim payments received by Plaintiff(s) including the estimate the flood payment was made on; the non-privileged portions of the Residential Insurance Carrier and Adjusting Company's claims file (including all claim diary notes, activity logs, loss notes and email correspondence regarding the insurance claim); payment ledger, payment log and/or proof of payment from the Insurance Carrier; a copy of the insurance policy in effect at the time of the Hurricane Ike claim; and the non-privileged portions of the underwriting file. If the Insurance Carrier is not in possession of the Adjusting Company's/Adjuster's claims file, and the Adjusting Company/Adjuster is not a named as a party in the lawsuit represented by separate counsel, then the Insurance Carrier shall seek the Adjusting Company's claims file and use their best efforts to exchange this information within the 60 day time period. The Insurance Carrier is also ordered to notify the independent adjusting company that all emails, activity notes and loss diary notes pertaining to a hurricane claim in litigation shall be preserved and not destroyed pursuant to this Court's Order regarding those emails and claims correspondence. Lastly, a privilege log will also be produced in accordance with the Texas Rules of Civil Procedure for any redactions or privileges being asserted on any documents in the claims file or claim correspondence.
- F. Exchange of Information Regarding Prior Claims. To the extent any carrier identifies a prior claim dated after January 1, 2005 involving the Plaintiff, the Defendant should provide notice of the existence of the claim to the Plaintiff's counsel within the time for exchange of information under Section E. Upon receipt of notice of the existence of a prior claim from a Defendant, the Plaintiff shall within a reasonable period of time provide:
- (a) A brief description of the nature of the claim (i.e., "repaired roof") as well as the name of the carrier upon whom the claim was made. If the carrier to whom such prior claim was made is different from the Defendant carrier for Plaintiff's current claims related to Hurricane Ike, then Plaintiff shall also provide the Defendant (subject to claims of confidentiality):
 - (1) The claim number of the prior claim;
 - (2) Notification as to whether any litigation arose out of the claim; and
 - (3) Any documents in Plaintiff's or Plaintiff's counsel's actual possession pertaining to such claim limited to the following:

- a. Repair estimates including revisions of same;
- b. Photographs, if any;
- c. Documents evidencing payment by the carrier;
- d. Documents evidencing repair.

- (b) In the event any of the above documents exist, but cannot be provided, Plaintiff shall provide the Defendant with an authorization limited to those documents set forth above. Defendant will diligently pursue obtaining the documents. Upon receipt of those documents Defendant will provide Plaintiff with a copy at defendant's cost. Defendant's failure to obtain the above described documents will not delay any scheduled mediation.

The above provisions regarding prior claims shall not limit future discovery, including requests for unlimited authorizations, as to prior claims in the event that mediation is unsuccessful. Claims of confidentiality shall be addressed first between counsel, and if necessary by Court intervention; however, the parties are encouraged to work together to avoid unnecessary delays or expense during the abatement process, including on matters relating to confidentiality.

- G. Any Expert Reports, Engineering Reports, Contractor Estimates or any other estimates of damages or repairs obtained by directive of Counsel for settlement, demand, or mediation purposes and exchanged prior to mediation shall be for "Mediation Purposes Only" and shall be considered confidential, except that any estimates and/or reports that are part of the claims file, which were obtained or prepared during the claims handling, shall not be considered confidential under this paragraph. Otherwise, such reports and estimates exchanged for mediation purposes shall only be used at trial if Plaintiff or Defendant designates the consultant as a retained testifying expert and does not properly de-designate prior to trial. If a consultant, whose report is produced at mediation, produces a subsequent report for use at trial, the mediation report shall remain confidential unless agreed to otherwise. The reports and estimates are only confidential for the lawsuit in which they are being used. Expert reports designated for mediation purposes shall be returned to the providing party within 14 days of a written request by the providing party for their return after mediation. Such reports shall not be discoverable or admissible at trial or any hearing. If the party procuring the report designates the expert to testify, such party shall have the right to prevent discovery or testimony by the expert regarding the mediation report and any opinions therein. The procuring party may use data such as measurements and photographs without waiving this privilege. Nothing herein shall prohibit the use of those reports and estimates in any subsequent insurance claims or lawsuits involving the same Residential Insurance Carrier.
- H. Once a mediation date and mediator are agreed to by all parties, the Defendants shall be permitted to one inspection of the residence involved in the lawsuit (as soon as practicable) prior to mediation. If mediation is unsuccessful, the Residential Insurance Carrier and other Defendants may re-inspect the residence with the same, new or additional experts pursuant to the Texas Rules of Civil Procedure.


I. The Mediator shall notify the Court within 48 hours once the case settles or an impasse has been declared by the Mediator. This notice shall be in writing and sent to all parties and the Court.

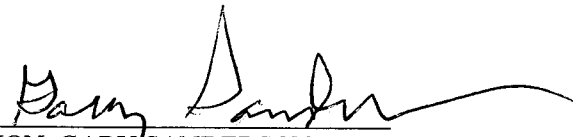
Upon the expiration of the abatement period applicable to the case (30 days) the parties will enter into an Agreed Scheduling Order, which will include a date for trial.


J. The Court shall set a Status Conference to occur on each case under this Order 150 days from the date the first answer is filed by any Defendant and provide written notice to all parties of the date and time of the Status Conference.

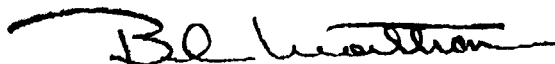
K. Anyone who opts out of this Order will automatically be under to the Texas Rules of Civil Procedure and local Rules of the County and Court regarding the litigation of the lawsuit opted out.

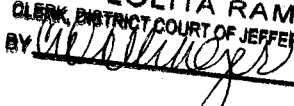
Signed this 07th day of July, 2009.


HON. DONALD FLOYD
PRESIDING JUDGE
172ND DISTRICT COURT


HON. GARY SANDERSON
ADMINISTRATIVE JUDGE AND
PRESIDING JUDGE
60TH DISTRICT COURT


HON. MILTON G. SHUFFIELD
PRESIDING JUDGE
136TH DISTRICT COURT


HON. BOB WORTHAM
PRESIDING JUDGE
58TH DISTRICT COURT

FILED
at 4:00 o'clock P. M.
JUL 07 2009
LOLITA RAMOS
CLERK, DISTRICT COURT OF JEFFERSON CO., TEXAS
BY  DEPUTY

MEDIATION ORDER

This case is hereby **ORDERED** to mediation by no later than _____, 2009. The parties have suggested the court appoint the following mediator, and pursuant to such agreement, the Court hereby appoints _____.

An attorney of record is **ORDERED** to attend for each party. All individual parties, either Plaintiff or Defendant, are **ORDERED** to attend; except that Individual Defendant Adjusters and Insurer Employee Defendants are not ordered to attend, but a representative with full authority to negotiate and settle their case on their behalf is **ORDERED** to attend. A representative of each non-individual party is **ORDERED** to attend unless the parties agree otherwise. Each party or party representative so attending must be vested with the authority to enter into a final settlement agreement. If there is insurance, a person who has full authority to decide whether insurance payments will be made must attend.

The parties are further **ORDERED** to BE PREPARED IN ADVANCE for the mediation. The parties must comply with the document production requirements as set forth in the Standing Case Management Order and in the manner prescribed by the Standing Case Management Order.

Counsel shall negotiate openly and knowledgeably; failure to negotiate in good faith, may be treated as contempt. All individuals ordered to attend must remain in attendance until the mediator declares the mediation concluded, subject only to recess as declared by the mediator. Failure to appear or to remain without timely seeking relief may be sanctioned as contempt. All settlement discussions shall be subject to Texas Rule of Evidence 408 and Tex. Civ. Prac. & Rem. Code 154.073.

Signed this _____ day of _____, 2009.

Judge Presiding

EXHIBIT "A"