

IN RE: § IN THE DISTRICT COURT OF
HURRICANE IKE §
RESIDENTIAL PROPERTY § GALVESTON COUNTY, TEXAS
CLAIM LITIGATION § 212TH JUDICIAL DISTRICT COURT

**STANDING PRETRIAL ORDER CONCERNING
HURRICANE IKE RESIDENTIAL PROPERTY CLAIMS**

The 212th District Court of Galveston County, Texas, has been appointed as the Consolidated Pretrial Court over Hurricane Ike Litigation filed in District Court in Galveston County, Texas. After consideration of pretrial issues and discussion with counsel representing claimants and counsel representing residential insurance carriers, the Court finds that pretrial matters should be expedited for the efficient handling of such claims.

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

- A. This Order shall be affective and apply to all lawsuits filed in the District Court of Galveston County, Texas wherein any policyholder (the “Plaintiff Insured”) asserts a claim arising from damage to residential property caused by Hurricane Ike, against an insurance carrier who issues insurance policies for residential property (the “Residential Insurance Carrier”); and
- B. Immediately upon the filing of an Original Petition, the District Clerk is hereby Ordered to send a copy of this Order to all parties in any lawsuit affected by this Order. Any Residential Insurance Carrier who is aware of this Order is ordered to attach a copy of this Order to its Original Answer, or to 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 files its Original Answer, 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”).
- D. Immediately upon the filing of the Residential Insurance Carrier’s Original Answer, the case will be abated until (1) 30 days after unsuccessful mediation 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 unsuccessful mediation or a party’s termination of the abatement period.

- E. Furthermore, once a mediation date and mediator are agreed to by all parties, the Residential Insurance Carrier shall be permitted to inspect the residence involved in the lawsuit (as soon as practicable) and the parties will 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; Photographs; Repair Receipts or Invoices; 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. A privilege log will also be produced in accordance with the Texas Rules of Civil Procedure.
- F. Any Expert Reports, Engineering Reports, Contractor Estimates or any other estimates of damages or repairs obtained and exchanged for 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.
- G. If mediation is unsuccessful, the Residential Insurance Carrier and other Defendants may reinspect the residence with the same, new or additional experts pursuant to the Texas Rules of Civil Procedure.
- G. Upon expiration of the abatement period applicable to the case, the parties will enter into an Agreed Scheduling Order as to the case.

Signed this _____ day of _____, 2009.

Judge Presiding