

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

**STANDING PRETRIAL ORDER CONCERNING
HURRICANE IKE COMMERCIAL CLAIMS FILED IN
COUNTY & DISTRICT COURT**

The, 212th District Court of Galveston County, Texas, has been assigned to handle all pre-trial matters for cases filed in both the District Courts and County Courts of Galveston County, Texas that involve insurance disputes arising out of Hurricane Ike. This Court has previously entered two prior Orders affecting cases involving residential claims filed in District Court in Galveston County, Texas, as follows: i) the Standing Pretrial Order Concerning Hurricane Ike Residential Property Claims dated March 13, 2009 (the “Standing Pretrial Order”) and ii) the First Supplemental Standing Pretrial Order Concerning Hurricane Ike Residential Property Claims dated June 2, 2009 (the “First Supplemental Pretrial Order”).

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

- A. This Order shall be affective and apply to all lawsuits filed in the County and District Courts of Galveston County, Texas wherein any policyholder (the “Plaintiff Insured”) asserts a claim arising from damage to commercial property caused by Hurricane Ike, against an insurance carrier who issues insurance policies for commercial property (the “Commercial Insurance Carrier”); and
- B. Immediately upon the signing of this order, the District Clerk and County Clerk are hereby Ordered to post this Order on each of their respective web sites.
- C. Any attorney for any Plaintiff Insured who is aware of this Order shall attach a copy of this Order to the Original Petition, or to otherwise send a copy of this Order to any party, if pro se, or to such party’s counsel of record.
- D. Within one hundred (120) days after the Commercial 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 Mediation Order (Exhibit “A”) to the Standing Pretrial Order. If the

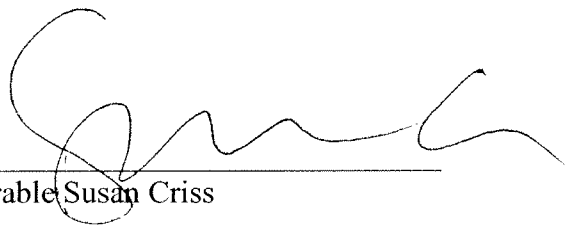
parties make an agreement around the timing in this provision, the parties must obtain approval of their agreement from the Court.

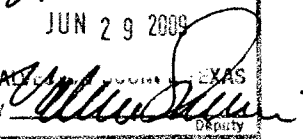
- E. Immediately upon the filing of the Commercial Insurance Carrier's Original Answer, the case will be abated until (1) 30 days after an impasse letter from a mediator or (2) notice by any party that the party desires to unilaterally end the abatement period applicable to a particular case 30 days 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 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 a mediator or a party's termination of the abatement period. If a party elects to participate in mediation or any other provision of this Order or elects to opt out of the abatement, such actions alone will not affect any parties' statutory or contractual rights.
- F. Furthermore, within 120 days of the filing of the Commercial 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 commercial property, 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 Commercial Insurance Carrier and Adjusting Company's claim file (including all claim diary notes, activity logs, loss notes and email correspondence regarding the insurance claims); payment ledger, payment log and/or proof of payment from the Commercial 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 Commercial Insurance Carrier is not in possession of the Adjusting Company's/Adjuster's claims file, and the Adjusting Company/Adjuster is not named as a party in the lawsuit represented by separate counsel, then the Commercial Insurance Carrier shall seek the Adjusting Company's claims file and use their best efforts to exchange this information within the 120 day time period. The Commercial 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 Order. 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. Within, 180 days of 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 any business interruption claim and/or loss of business income claim, to the extent same exists, including the following; Lost Profits information, Inventory Loss List with values, food loss, Lost Business Expense information and documentation, Accounts Receivable information (if

any), Business expense information, accounting and financial information and documentation applicable to determining Lost Profits, Business Loss, or Loss of Business Income.

- 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 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 Commercial Insurance Carrier.
- H. Once a mediation date and mediator are agreed to by all parties, the Commercial Insurance Carrier and other Defendants shall be permitted to inspect the residence involved in the lawsuit (as soon as practicable) prior to mediation. If mediation is unsuccessful, the Commercial Insurance Carrier and other Defendants may reinspect 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 an impasse has been declared by the Mediator. This notice shall be in writing and sent to all parties and the Court.
- J. Upon the expiration of the abatement period applicable to the case, within 30 days the parties will enter into an Agreed Scheduling Order, which will include a date for trial.
- K. The Court shall set a Status Conference to occur on each case under this Order 220 days from the date the Original Petition was filed or the date of this Order, whichever is later, and provide written notice to all parties of the date and time of the Status Conference.

Signed this 24 day of June, 2009.


The Honorable Susan Criss

LATORIA B. WILSON
CLERK DISTRICT COURT
FILED
12:15
JUN 29 2009
SABALA COUNTY TEXAS
BY 
Deputy