

IN RE:	§	IN THE DISTRICT COURT OF
	§	
HURRICANE IKE	§	
	§	HARRIS COUNTY, TEXAS
RESIDENTIAL PROPERTY	§	
	§	
CLAIM LITIGATION	§	11 <sup>TH</sup> JUDICIAL DISTRICT

**STANDING PRETRIAL ORDER CONCERNING  
RESIDENTIAL HURRICANE IKE CASES**

All residential Hurricane Ike cases filed in the District Courts of Harris County, Texas have been transferred to the 11<sup>th</sup> District Court as a Special Docket pursuant to Rule 3.2.3(c) of the Civil Trial Division of Harris County. 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 effective and apply to all lawsuits filed in the District Courts of Harris County, Texas in which any policyholder (the "Plaintiff") 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 "carrier").
- B. All parties subject to this order must electronically file using TexasOnline at [www.texasonline.com](http://www.texasonline.com) and in compliance with the Harris County Local Rules regarding electronic filing. Each party will register with TexasOnline for receipt of electronic service, and copies of each filing will be electronically served on all parties in the case. The District Clerk is ordered to notify all parties subject to this Order of this Order and the Harris County Local Rules concerning the electronic filing of court documents. This notification may be included with citation issued to any party; if no citation is to be issued, then it may be sent by any method specified in TRCP Rule 21a. Any Plaintiff who is aware of this Order should attach a copy of this Order to her Original Petition in all cases filed after the date of this Order. In addition to the notification required of the District Clerk in this paragraph, Plaintiff is also responsible for notifying all parties in existing and future cases of this Order. A copy of this Order will be posted on the court's website at [www.justex.net/civil/11](http://www.justex.net/civil/11).
- C. Within one hundred (100) days after the 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

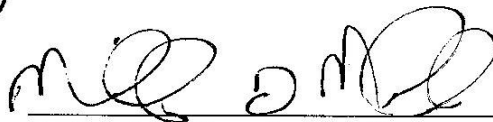
and mediation date, they shall notify the 11th Court Coordinator, Rhonda Harrison, of the date of the mediation and the mediator.

- D. Immediately upon the filing of the 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 parties' statutory or contractual rights.
- E. Within 60 days of the filing of the 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 it exists, including the following: expert reports, engineering reports, estimates of damage or repairs, contents lists for contents' damages claims, 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 carrier's and adjusting company's claims files (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 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 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 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 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. A privilege log will 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. 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 in this paragraph shall prohibit the use of those reports and estimates in any subsequent insurance claims or lawsuits involving the same carrier.

- G. Once a mediation date and mediator are agreed to by all parties, the Defendants shall be permitted one inspection of the residence involved in the lawsuit (as soon as practicable) prior to mediation. If mediation is unsuccessful, the carrier and other Defendants may re-inspect the residence with the same, new or additional experts pursuant to the Texas Rules of Civil Procedure.
- H. 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.
- I. Upon the expiration of the abatement period applicable to the case (30 days) the parties will enter into an Agreed Scheduling Order.
- J. The court shall set a Status Conference to occur on each case under this Order 180 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. When any abatement period ends by any method permitted by this Order, the parties will then be governed by the Texas Rules of Civil Procedure and the Harris County Local Rules as in any other civil case.
- L. The requirement of electronic filing in paragraph B does not alter TRCP 191.4 regarding the filing of discovery materials. Certificates of written discovery will continue to be filed (electronically).
- M. Do not file courtesy copies for the court. They will not be accepted.

Signed this 26 day of May, 2009.



Judge Presiding, Judge Miller

**FILED**

Loren Jackson  
District Clerk

**MAY 26 2009**

Time: \_\_\_\_\_

Harris County, Texas

By \_\_\_\_\_

Deputy