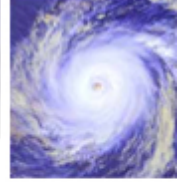




## HURRICANE IKE INSURANCE LAW NEWSBRIEF



[www.mdjwlaw.com](http://www.mdjwlaw.com)

A Service of Martin, Disiere, Jefferson & Wisdom L.L.P.

Principal Office 808 Travis, Suite 1800 Houston, Texas 77002 713.632.1700 FAX 713.222.0101  
111 Congress Avenue, Suite 1070 Austin, Texas 78701 512.610.4400 FAX 512.610.4401  
900 Jackson Street, Suite 710 Dallas, Texas 75202 214.420.5500 FAX 214.420.5501

**November 17, 2008**

This Fourth Special Edition of the *Texas Insurance Law Newsbrief* is designed to provide our readers with brief updates related to coverage, claim, and litigation issues related to the damages caused by Hurricane Ike in Texas. Our intent is to keep our readers apprised of legal issues emerging as a result of Hurricane Ike and to keep them informed about the issues we see coming as the carriers of the state deal with numerous new legal and regulatory issues. We will continue to provide more detailed updates in future issues regarding Ike-related claims and, when Ike lawsuits are filed, we will analyze and report on the issues which gave rise to the litigation.

### **FIRST TWO IKE BAD FAITH LAWSUITS FILED**

It didn't take long for the bad faith suits arising from Ike to be filed. Last week, the first two Ike bad faith lawsuits that we are aware of were filed in Galveston and Ft. Bend Counties. In Fort Bend County, a breach of contract suit was filed last week titled *Gatesco Inc. v. Steadfast Insurance Company*, 08-dcv-167596 in which plaintiffs claim the insurer failed to pay policy benefits after its property sustained damages during Ike. On November 7th, an Ike bad faith lawsuit was filed in Galveston County titled, *Williamson, et. al. v. Brown & Brown Insurance Services of Texas and Chubb Lloyds Insurance Company of Texas* for alleged failures to pay Ike-related damages. These are first of several thousand Ike lawsuits expected to be filed across Southeast Texas over the next several years. There doesn't appear to be anything uniquely significant about them other than their apparently quick filing so soon after the storm. We expect the first "wave" of such suits to be filed in late December as lawyers try to get a 2008 filing date on some disputes in an effort to get them set for trial more quickly. We expect the majority of Ike suits to be filed after the first quarter of 2009. We will continue to track the filing of new Ike suits and will report on any significant developments.

### **THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) EXTENDS THE DEADLINE TO FILE PROOFS OF LOSS FOR FLOOD DAMAGE BY 120 DAYS**

Normally, the deadline to file a proof of loss for flood claims is 60 days from the time the loss occurred. The National Flood Insurance Program recently extended this 60-day period by 120 days. This means the insured now has 180 total days to file the proof of loss with the flood insurer. This extension applies to property located only in certain named states damaged by Hurricane Gustav and Ike. The NFIP states that while all other terms and conditions of the Standard Flood Insurance Policy remain in effect, it is hoped that the extension of time for filing proofs of loss by 120 days will give affected policyholders ample opportunity to present their statement of claim. Furthermore, this extension will be monitored by FEMA to determine whether or not a further extension might be warranted.

## **HOMEOWNERS ARE FACING A SURPRISING ISSUE IN THEIR ATTEMPT TO REBUILD THEIR HOMES**

In Jefferson County, many homeowners are facing difficulties rebuilding their homes, not because the adjusters are too busy to do their property damage estimates, nor because there aren't sufficient contractors to fulfill the demand, but because they cannot obtain building permits. Recent press reports indicate some Jefferson County homeowners discovered their homes were built lower than a flood plain survey had reported and this federal surveying mistake unfortunately came to light after Hurricane Ike flooded their homes. The state introduced a buyout program to purchase these homes from their owners but the homeowners have to pay 25% of the home's value to Jefferson County, who will then demolish their homes. While these issues are sorted out, insurers need to keep in mind that a prospective ALE or property damage claims in this unique situation will not be typical and investigation into these issues will require evaluation of questions not typically addressed by most CAT claims in order to properly evaluate these claims.

## **PROPOSED CHANGE REGARDING REQUIRING COVERAGE FOR LOSS INCURRED AS A RESULT OF COMPLIANCE WITH AN EMERGENCY EVACUATION ORDER**

Now that the 2009 Texas legislative session is about to begin in January, the race to get bills on file has begun. The date to begin filing any bills that will be presented to the legislature was November 10, 2008. Amongst the hundreds of bills that have already been filed are bills related to the insurance industry. One proposed bill of interest is a proposed change to the Texas Insurance Code stating insurers that provide residential property insurance *must* provide coverage for loss incurred as a result of compliance with an emergency evacuation order. Draft S.B. 147 was introduced by Senator Rodney Ellis, a Democratic senator from Houston. Although only 10–15 % of the approximately 4,400 bills filed became law during the last legislative session, this proposed change may garner more attention due to the continuing difficulties faced by many homeowners after Hurricane Ike. In fact, it has been reported by several media outlets that this bill was filed to require all homeowner's carriers to cover hotel stays in case of hurricane evacuation.

## **KATRINA UPDATE: A PREDICTOR OF IKE?**

In the three years since Hurricane Katrina, it has been estimated that between 27,000 and 30,000 hurricane insurance suits were filed in southern Louisiana. Of the 12,565 suits filed in federal court, only slightly more than half -- 7,837 -- cases, have gone to judgment or settled. Some federal court judges have attempted to streamline the flow of cases by issuing form orders applicable only to Katrina-related cases. These efforts have not moved cases as quickly as was hoped and one federal judge recently predicted in an interview that it will be "a couple more years" to settle or try all the Katrina insurance litigation. Some of these cases have provided an opportunity to obtain clarification of the law on critical issues such as whether the flood exclusion in most Louisiana homeowner policies is ambiguous, whether Louisiana's Valued Policy Law statute compels an insurer to pay policy limits even when some or most of the damage is attributable to a non-covered peril, and the extent to which recovery under a homeowners policy can be offset by prior flood policy payments. Much of what remains in New Orleans

Katrina homeowner lawsuits are the many diverse individual claims that were initially brought as part of the several mass joinder lawsuits and are which now being evaluated for individual treatment.

One of the biggest questions facing the judges in the state and federal courts of Houston and Galveston is whether similar mass consolidations will be needed for the Hurricane Ike insurance litigation. The election upheaval in the Harris County Courthouse two weeks ago slowed any such discussions until the slate of new judges are seated in January. By then it is expected that several hundred Ike insurance lawsuits will have already been filed.

## **AGGRESSIVE PLAINTIFF LAWYERS MARKETING IKE INSURANCE CLAIMS**

Residents of Houston, Beaumont, and Galveston can't miss the dozens of new billboards and radio ads relating to Ike insurance claims. A web search for Hurricane Ike Claims reveals at least ten lawyer websites "sponsoring" most searches. Some Plaintiffs' attorneys are using ingenious means to attract homeowners to their websites or offices. For example, websites such as [www.ihateike.com](http://www.ihateike.com), [www.myhurricaneikeclaim.com](http://www.myhurricaneikeclaim.com), or [www.hurricaneikeadvisory.com](http://www.hurricaneikeadvisory.com) attract people by trying to offer free "advice" and "assistance" to anyone seeking information regarding Ike claims. These websites are provided by plaintiffs' lawyers seeking to sign up new clients. One lawyer who has been specializing in bad faith suits arising out of Hurricane Rita is even offering a free camera with instructions from counsel on how to "best document a property damage claim." It is impossible to miss the dozens of local television and radio advertisements for plaintiff lawyers regarding Ike insurance claims. Roadside yard signs promoting Beaumont-area Plaintiff firms have dotted the landscape across the Bolivar Peninsula even while those communities were under mandatory "look and leave" orders. The interesting issue for us is the number of large and successful plaintiff firms who historically have *never* done first party bad faith lawsuits who are now lining up clients as fast as they can get them. In addition to signaling a warning about potential volume, this factor also indicates to us an opportunity to potentially resolve certain disputes by simply educating lawyers who have no prior experience with Texas property law or the coverages available under homeowners and commercial property policies.

***If you do NOT want to receive any future of issues of our Hurricane Ike Newsbrief, or if others in your office DO want to receive all future issues of our Hurricane Ike Newsbrief, please send an email requesting to be added or deleted to our Hurricane Ike Newsbrief to [tin@mdjwlaw.com](mailto:tin@mdjwlaw.com)***

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.  
If you would like to add additional recipients or would like to unsubscribe, please reply to this e-mail with your request  
For past copies of the Newsbrief go to [www.mdjwlaw.com](http://www.mdjwlaw.com) and click on our Texas Insurance News page.