

THOUGHT LEADERSHIP

News

## USAA WINS SUMMARY JUDGMENT IN HURRICANE IKE CASE BASED ON POLICY NOT BEING IN FORCE

Newsbrief

12 DEC 2011

On Monday, November 28th, Judge Mike Miller in Houston granted summary judgment in favor of USAA as to all claims brought by plaintiff as a result of damage she alleged was caused by Hurricane Ike and for which she claimed USAA failed to timely pay.

On August 20, 2008 USAA sent a notice of cancellation to the plaintiff advising the insured's policy would cancel at 12:01 am on September 12, 2008 should the premium not be paid in full. The notice of cancellation provided the payment must be received or postmarked prior to 12:01 am on September 12, 2008. On September 5, 2008, plaintiff made a partial payment of the past due amount and during the day on September 12, 2008 (after the previously-established deadline had passed), plaintiff authorized an electronic payment for the remaining balance. Hurricane Ike made landfall the next day and plaintiff filed a claim for property damage due to Ike. USAA investigated the claim and issued payment for plaintiff's food spoilage on the spot. After this initial inspection, however, USAA discovered plaintiff's policy had automatically cancelled for failure to pay the premiums due. USAA then denied plaintiff's claim and, several months later, the insured sued.

Plaintiff responded to USAA's summary judgment arguing that she had substantially complied with the provisions of the policy and had allegedly made a payment on the due date. Plaintiff further argued that had the payment been mailed and postmarked prior to September 12, 2008, it would likely have been received at some date later than September 12, 2008 when the electronic payment was received. Judge Miller agreed with the defense that the notice of cancellation was clear and plaintiff's failure to pay the premiums in full *prior to* September 12, 2008 effectively cancelled the policy. As there was no policy in force at the time of the loss and as such, there was no basis for Plaintiff's claims of breach of contract, misrepresentations as to coverage or violations of the Texas Insurance Code and Judge Miller granted summary judgment dismissing plaintiff's suit in its entirety.

**Editor's note:** MDJW had the privilege of representing USAA in this case before the trial court. It is unclear at this time if the insured's will appeal.