

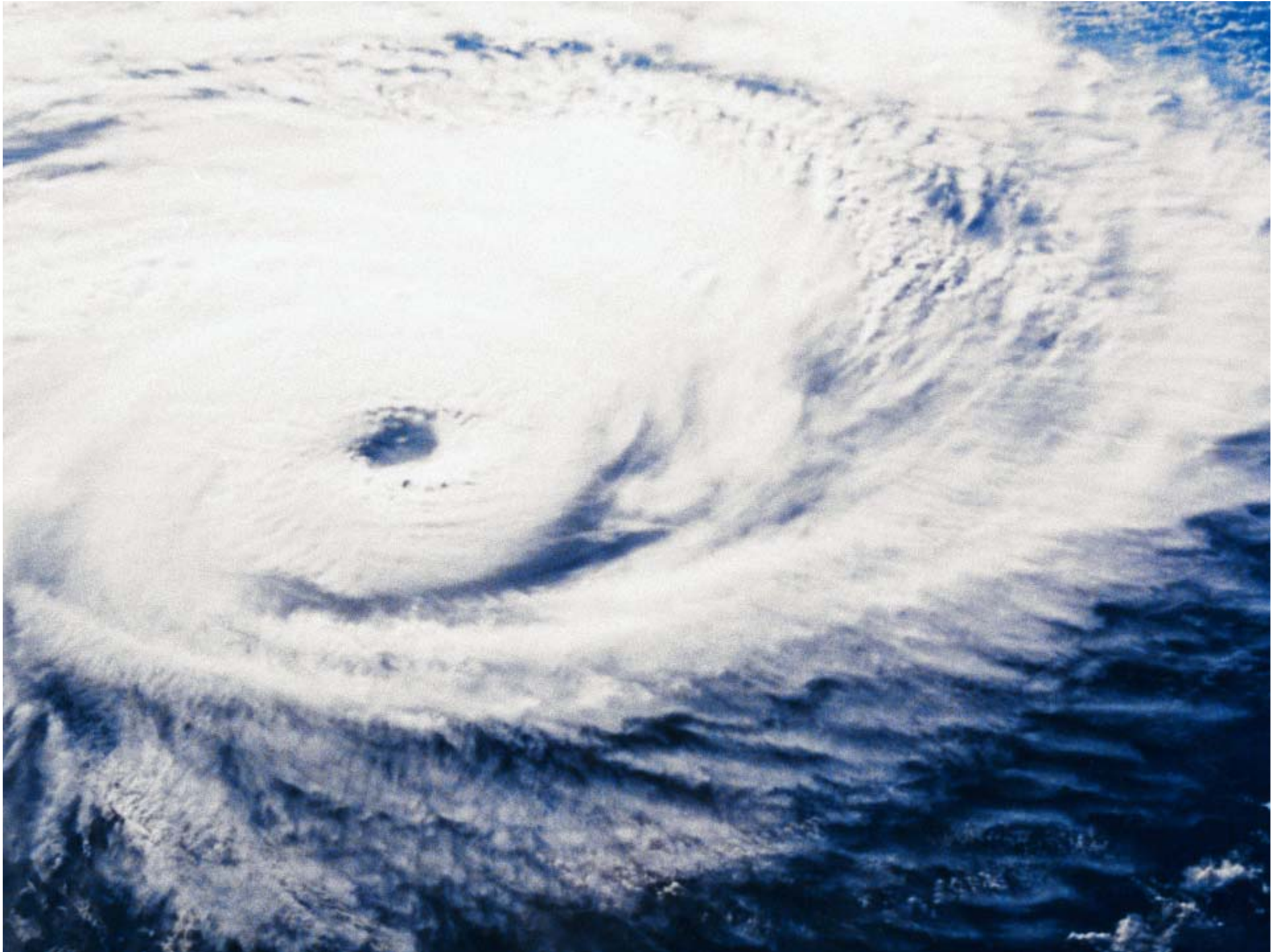
Property Coverage Update

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Historical Hurricane Costs

1983 - Hurricane Alicia - \$157M

2001 - T. S. Allison - \$3.5M

2005 - Hurricane Rita - \$2.8B each in Texas
and Louisiana

2008 - Hurricane Dolly - \$500M

Hurricane Ike Estimated Costs

- \$12B in flood and windstorm claims
- 800,000 windstorm claims
- 44,000 flood claims
- TWIA expected to pay \$1.8B
 - \$280M for Dolly
- Also \$318M in flood claims in Louisiana and \$1B in windstorm claims in Ohio

Hurricane Ike Estimated Costs

- Only one carrier insolvent
- TWIA solvent using all of \$470M Reserve Trust Fund, \$1.5 B in reinsurance, and \$530M assessing insurance companies
- Of 800,000 Ike claims, 2,683 “justified” TDI complaints (.33%)

Life Cycle of an Ike Lawsuit

- Suit filed
 - Did named insurer issue the policy?
 - Did named adjuster work on the claim?
 - Are we in the right court?

Life Cycle of an Ike Lawsuit

- Are we in the right court?
 - All Harris County residential cases → 11th JDC
 - Harris County commercial cases randomly assigned
 - Galveston cases → centralized pre-trial in 212th JDC

Life Cycle of an Ike Lawsuit

- Benefits of removing
 - Plaintiffs hate federal court**
 1. If SJ possible due to claims asserted, more likely granted
 2. Larger jury pool
 3. Expert reports required
 4. No standing order requiring early mediation

Life Cycle of an Ike Lawsuit

- Is removal possible?
 - Diversity plus \$75,000 or less?
 1. Fraudulent joinder of adjuster?
 - If no amount alleged, try to obtain stipulation
 1. *Carr v. CVS Drug Stores*, 2008 WL 4844712 (W.D. Tex. Oct. 6, 2008)

The Removal Process

- Answer beforehand
- Federal notice of removal
 - Affidavits may be needed
- State notice of removal
- 30-day deadline from service

Abatement Options

- For failure to provide notice
 - Insurance Code sec. 541.154
 - DTPA sec. 17.505
- *See Boone v. Safeco Ins. Co.*, 2009 WL 3063320 (S.D. Tex. 2009)

11th Judicial District Court

- Judge Mike Miller
 - Democratic candidate who defeated Judge Mark Davidson in the 2008 election
 - 27 years as a trial lawyer, both plaintiff and defense
 - 150 jury trials, both civil and criminal
 - Board certified in personal injury trial law since 1993

Galveston County

- Random assignment to 6 district courts for trial
- Standing Pre-Trial Order applies in all cases (incl. commercial)
- Pre-trial with Judge Criss
- More TWIA and agent E&O cases

212th Judicial District Court

- Judge Criss
 - 1986 graduate of STCL
 - Trial lawyer for 3 governmental agencies for 10 years
 - Solo practitioner 2 years in Galveston
 - Judge since 1999
 - Narrowly lost TXSC democratic primary in 2008 to Linda Yanez
 - Tried BP explosion case

Harris County Standing Pre-Trial Order

- Online: www.justex.net/civil/11
- Applies to all Harris County residential state court cases
- Requires electronic filing
- Requires mediation agreement (mediator and date) within 100 days

Harris County Standing Pre-Trial Order

- Automatic Abatement
 - From date of answer until 30 days after:
 1. Mediator-declared impasse, or
 2. Party-requests end to abatement
 - May serve discovery, but responses not due until abatement ends
 - Does not affect statutory deadlines, interest, or penalties

Harris County Standing Pre-Trial Order

- Exchange of information required within 60 days of carrier's answer:
 - Expert reports and damage estimates
 - Contents lists
 - Photographs
 - Repair receipts or invoices
 - Flood claim payments received
 - Non-privileged portions of carrier's and adjusting company's claim files (diary notes, activity logs, loss notes, and e-mails). . .

Harris County Standing Pre-Trial Order

- Also included:
 - Payment ledger, log, and other proof of payment by carrier
 - Copy of insurance policy
 - Non-privileged portions of underwriting file
- If adjuster not named, carrier should get his/her file and produce
- Carrier also must notify independent adjusting companies that their files must be preserved and not destroyed*

Harris County Standing Pre-Trial Order

- Pre-mediation expert reports
 - Confidential; for mediation purposes only
 - Use at trial only if expert is designated and not de-designated
 - 14 days after mediation, can request return of report
 - If designated as an expert, may not obtain discovery of or testimony regarding pre-mediation report/opinions

Harris County Standing Pre-trial Order

- One inspection permitted before mediation
- May re-inspect if mediation fails
- Mediator must send notice to court of results of mediation within 48 hours
- Agreed Scheduling Order due 30 days after abatement expires
- Status conference 180 days from first answer

Order Regarding Appraisal Requests

- May not opt out of Standing Pre-Trial Order unless all parties agree to opt out and to participate in appraisal
- No motion to compel appraisal will be heard until after informal discovery and mediation completed

Order Concerning Master Discovery

- Only master discovery may be served
 - Interrogatories and RFPs to Plaintiffs
 - Interrogatories and RFPs to Insurers and Adjusters
- Letter required requesting that party respond

Master Discovery Generally

- Per Judge Miller, answer interrogatories “like RFPs don’t exist”
- Don’t just refer to documents
- Wants parties to commit on their positions (no hedging)
- Objections will all be overruled unless unique circumstances
- Give extensions freely

Master Discovery to Plaintiffs

- Documents:
 - Communications with defendants, including recordings
 - Diaries kept
 - Engineering reports, photographs, videos, and building diagrams
 - Inventories, purchase orders, receipts, invoices, quotes/estimates, construction/remodeling contracts, etc.
 - If no receipts, bank statements, credit/debit card statements, etc. are required*

Master Discovery to Plaintiffs

- Communications with other insurers
- All proofs of loss submitted to any insurer
- Invoices, estimates, etc. for >\$500 repairs made during three years before Ike
- If actual or attempted sale in three years before Ike, all documents
- All policies providing insurance

Master Discovery to Plaintiffs

- If living expenses sought, all leases or rental agreements, invoices/receipts, utility bills, mileage logs, etc.
- Applications for loans or benefits from the government, public/private entities, and charities
- Supporting documentation for lost wages, personal injuries, and mental anguish, incl. tax, business, medical, and payroll records

Master Discovery to Plaintiffs

- Interrogatories:
 - Trial witnesses
 - 3 years of insurance claim events, description of damage, name of insurer, \$ received
 - If Ike claim to other carrier, name of insurer, description of damage, \$ received
 - If loans or benefits applied for, identify and state \$ received

Master Discovery to Plaintiffs

- For personal property:
 - Describe item, identify seller and date of purchase, state replacement cost and ACV or cost and status of repair and amount paid
- Post 9/13/2005 outstanding loans on property & amounts owed, mortgagor, amounts owed
- Engineers, contractors, inspectors
- Details of sale/purchase attempts
- Details for repairs made in 3 years before Ike

Master Discovery to Plaintiffs

- Details of damages by Ike
- Amounts for repairs and identity of persons performing
- Dates home uninhabitable and costs incurred
- Whether flood waters or storm surge entered property, observations made
- Identify chronologically all communications

Master Discovery to Plaintiffs

- For DTPA, Insurance Code, fraud, conspiracy, and good faith/fair dealing claims, state bases and damages
- If knowing violation alleged, state basis
- If mental anguish, identify health care provider
- If attorneys' fees sought, all information
- Date litigation anticipated

Master Discovery to Insurers & Adjusters

- Documents:
 - Claim files from all offices, the field, and adjusters
 - Underwriting files
 - Certified copy of policy
 - Electronic diary and notes
 - Written claims-handling policies and procedures from 8/31/07 to 8/31/09
 - For independent adjusters, claim-handling policies for adjusting co. and hiring carrier

Master Discovery to Insurers & Adjusters

- Policies and procedures for complaints by windstorm policyholders
- Operations Guides for Ike claims for 9/1/08 to 8/31/09
- Adjusting reports, estimates, and appraisals
- Engineering and mold reports
- Engineering reports for Ike damage within 1-mile radius if disputing that Ike was sole cause of loss

Master Discovery to Insurers & Adjusters

- Plumbing reports
- Roofing repair reports
- Field notes, measurements, and adjusters' and engineers' files
- E-mails, IMs, and internal correspondence
- Videos, photographs, recordings
- Internal newsletters, bulletins, publications, and memoranda for handling hurricane claims

Master Discovery to Insurers & Adjusters

- Price guidelines
- Plaintiff's insurance agent's file
- Weather and storm surge information relied upon
- Manuals, training materials, etc. for adjusting property claims from 8/31/07 to 8/31/09
- Pay sheet, payment log, etc. including indemnity, claim expenses, and third-party payments

Master Discovery to Insurers & Adjusters

- Billing statements for independent adjusters and engineers
- Reserve documents*
- Disciplinary documents for adjusters relating to claims handling*
- Windstorm managers' and adjusters' bonus and incentive plans for 1/1/08 to 8/31/09*
- Criteria/procedures for hiring independent adjusters/engineers

Master Discovery to Insurers & Adjusters

- If engineer hired, number of other matters on which engineers retained*
- Windstorm complaint log for 3 years
- Approved/preferred vendor lists
- Contracts with third-party adjusters
- Correspondence with third-party adjusters, engineers, and estimators

Master Discovery to Insurers & Adjusters

- Interrogatories:
 - Trial witness
 - Claims/investigation personnel
 - Investigative steps taken if not in claims file
 - Identify all estimates, appraisals, engineering, and mold reports
 - Chronology of claim
 - Proceeds paid by date, amount, and reason

Master Discovery to Insurers & Adjusters

- Decision regarding claim
- Identify written claims-handling policies and procedures for all adjusters
- Date litigation anticipated
- Identify documents you generate while handling claims
- Identify documents destroyed and describe retention policy

Master Discovery to Insurers & Adjusters

- Contentions as to:
 - Damage by flood, storm surge, and excluded perils
 - Voiding/nullifying/breaching of contract by insured
 - Failure to satisfy conditions precedent
- Methods of evaluation of adjusters
- Bonus and incentive plans

Orders Concerning Depositions

- Galveston, Harris, & Brazoria
 - TWIA depositions limited in number
 - 14 individuals named
 - 30 days' notice required
 - List of topics 21 days in advance
 - TWIA must designate rep 14 days in advance
 - 3 or 5 total days allowed

Orders Concerning Depositions

- Liaison counsel may designate up to 4 questioning attorneys
- One hour at end for others to question
- One additional hour for all other parties to question
- Deposition can be used in all TWIA cases consolidated in the 11th JDC
- Limited case-specific depositions also allowed

Protective Order

- Harris County
 - State court residential claims only
 - Can use confidential information in “related litigation”
 - Exceptions: employee-specific files, case-specific underwriting files, case-specific claim files

Other Suits of Interest

- Pending TWIA Lawsuits
 - Shingle lift case: No. 09-cv-0147, *Bakht Khattak v. TWIA*, 56th JDC of Galveston County, Texas
 1. Plaintiff claims damage occurs once adhesion lost
 2. TWIA says shingles must be damaged
 - Bolivar Peninsula slab claims: TWIA's position is that where total loss occurs, 11.2% of the damage is caused by wind, and the rest is flood

Other Suits of Interest

- Beaumont inmate lawsuits
 - LeBlanc Unit of Texas Dept. of Criminal Justice
 - Allege they should have been evacuated
 - Claim psychological trauma
 - Allege they drank water contaminated with salt by storm surge water

Questions?

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