

**MISSISSIPPI DEPARTMENT OF INSURANCE
EMERGENCY REGULATION NO. 2005-2
TEMPORARY SPECIAL MEDIATION PROGRAM FOR PERSONAL LINES
RESIDENTIAL INSURANCE CLAIMS RESULTING FROM HURRICANE
KATRINA**

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Section 1. Authority And Specific Reasons For Finding An Imminent Peril To The Public Health, Safety Or Welfare

The 2005 Hurricane season has been extremely destructive for Mississippi. Extensive and devastating damage was caused by Hurricane Katrina, which hit the Mississippi Gulf Coast on August 29, 2005, as a category 4 hurricane. Hurricane Katrina continued northward, blanketing the State and causing widespread major damage to homes, loss of personal belongings and corresponding loss of employment.

Pursuant to the Governor's Proclamations dated August 26, 2005, and September 2, 2005, Governor Barbour declared a state of emergency invoking his emergency powers pursuant to Miss. Code Ann. § 35-15-11, and directed agencies of the State to discharge their emergency responsibilities as deemed necessary as set forth in the State of Mississippi Emergency Operations Plan and Executive Order No. 653, dated November 16, 1990. In accordance with the Proclamations and Executive Order, and Miss. Code Ann. §§ 33-15-11(b)(9) and 33-15-11(c)(4), there was a delegation of those emergency powers to the Commissioner of Insurance which allows him, in his discretion, to promulgate emergency regulations and guidelines to promote and secure the safety and protection of the citizens of this State.

The Commissioner of Insurance hereby adopts, pursuant to Miss. Code Ann. § 25-43-3.108 (Rev. 2003), on a temporary emergency basis, Emergency Regulation No. 2005-2, which sets forth a non-adversarial alternative dispute resolution procedure which is prompted by the critical need for effective, fair and timely handling of personal lines residential insurance claims arising out of the damages to property caused by Hurricane Katrina.

Section 2. Purpose And Scope

This emergency regulation establishes a special mediation program for personal lines residential insurance claims resulting from Hurricane Katrina. It creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, and the conduct of mediation proceedings.

Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible. The procedures established by this emergency regulation are available to all first party claimants prior to commencing either litigation or the appraisal process, who have personal lines claims resulting from damage to residential property in Mississippi caused by Hurricane Katrina. Insureds who have elected to commence the appraisal process under their policies must first complete that process prior to being eligible to request the mediation procedures established hereunder. This emergency regulation does not apply to commercial insurance (including forced-placed lender protection programs), private passenger motor vehicle insurance or to liability coverage contained in property insurance policies.

The mediation procedures established under this emergency regulation shall not be available to the insured where the underlying issue is whether the policy was canceled, nonrenewed or lapsed prior to the loss resulting from Hurricane Katrina. Insureds may submit these issues to the Consumer Assistance Division of the Department for review.

Section 3. Definitions

- (a) "Administrator" means the American Arbitration Association.
- (b) "Claim" means any matter on which there is a dispute or for which the insurer has denied payment. Unless the parties agree to mediate a claim involving a lesser amount, a claim involves a dispute in which the difference between the positions of the parties is \$500.00 or more. Claim does not include a dispute with respect to which the insurer has reported allegations of fraud to the Department, based on an investigation by the insurer's special investigative unit.
- (c) "Department" means the Mississippi Department of Insurance or its designee.
- (d) "Insurer" means only those companies subject to the jurisdiction of the Department as provided in Miss. Code Ann. § 83-5-1 (Rev. 1999), and which provide personal residential property insurance coverage in the State of Mississippi. The term insurer shall include eligible non-admitted insurers/surplus lines insurers doing business in Mississippi pursuant to § 83-21-17 et seq. (Rev. 1999), and the Mississippi Windstorm Underwriting Association. The term insurer shall not include the National Flood Insurance Program.

(e) "Mediator" means an individual selected by the Administrator designated by the Department to mediate disputes pursuant to this emergency regulation. Mediators will be selected from a panel of mediators approved pursuant to the Mississippi Court Annexed Mediation Rules For Civil Litigation, adopted by the Mississippi Supreme Court on October 2, 1998.

(f) "Party" or "Parties" means the insured and his or her insurer, including the Mississippi Windstorm Underwriting Association. The terms Party or Parties shall not include the National Flood Insurance Program.

Section 4. Notification Of The Right To Mediate

Beginning January 6, 2006, within 10 days of the time an insured files a first-party claim, the insurer shall mail to the insured a notice of the right to mediate disputed claims. No other materials, forms or documents may be included in the mailing that contains this notice. For claims not yet settled that were filed prior to January 6, 2006, the insurer shall mail the notice prescribed herein to the insured by no later than January 20, 2006. A sample notification letter for use by insurers is attached hereto as Exhibit "A". Use of this letter by insurers will satisfy the notification requirements of this Section.

Section 5. Request For Mediation

After 10 days from the date of the notice, an insured may request mediation by writing the Administrator at American Arbitration Association, Attn. MS Insurance Mediation, 13455 Noel Road, Suite 1750, Dallas, TX 75240; by calling the Administrator at 1-800-426-8792; by faxing a request to the Administrator at 972-490-9008; or by contacting the Administrator on-line at Msinsmediation@adr.org.

The insured should provide the following information, if known:

- (a) Name, address, and daytime telephone number of the insured and location of the property if different from the address given;
- (b) The claim and policy number for the insured;
- (c) A brief description of the nature of the dispute;
- (d) The name of the insurer and the name, address and phone number of the insured's contact person for scheduling mediation; and
- (e) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

Section 6. Scheduling Of Mediation

The Administrator will select a mediator and the Administrator will schedule the mediation conference. The Administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The Administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The conference shall be scheduled within 20 days from the date the Administrator received the request. The Administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the Department. The insurer shall notify the Administrator as soon as possible after settlement of any claim that is scheduled for mediation pursuant to this emergency regulation.

Section 7. Mediation Conference

(a) The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference. Disclosure of material from the claims file is within the discretion of the mediator, and the mediator shall avoid production of privileged materials. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

(b) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

(c) The insurer shall pay the costs of the mediation. Within 5 days of the insurer's receipt of the request for mediation, the insurer shall pay a non-refundable administrative fee in the amount of \$100.00 to the Administrator, which shall be used to defer the expenses of the Administrator. The insurer shall also pay \$250.00 to the Administrator for the mediator's fee not later than 5 days prior to the date scheduled for the mediation conference. However, if the mediation is cancelled for any reason more than 120 hours prior to the scheduled mediation time and date, the insurer shall pay \$50.00 to the Administrator for the mediator's fee instead of \$250.00. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 120 hours of the scheduled time.

(d) If the insured fails to appear, without good cause as determined by the Administrator, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the Administrator, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalties under Miss. Code Ann. § 83-5-29 et seq. and other applicable law.

(e) The Department reserves the right to have a representative present at any mediation conference conducted pursuant to this emergency regulation.

(f) The mediator will be in charge of the mediation conference and will establish and describe the procedures to be followed. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjustors, appraisers, or contractors, to address the mediator. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement. The parties may be represented by counsel at the mediation conference. A party who will be represented by counsel at the mediation conference must notify the Administrator at least 10 days prior to the date scheduled for the mediation conference. All statements made and documents reviewed at a mediation conference shall be deemed settlement negotiations in anticipation of litigation.

(g) Both parties must negotiate in good faith at the mediation conference. A party will be determined to have not negotiated in good faith if the party, or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator. The mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith.

Section 8. Post Mediation

(a) Within 5 days of the conclusion of the mediation conference the mediator shall file with the Department and the Administrator a mediator's status report indicating whether or not the parties reached a settlement. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report.

(b) Mediation is non-binding. However, if a settlement is reached, the insured shall have 3 business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the mediation conference. If a settlement agreement is reached and is not

rescinded, it shall act as a release of all specific claims that were presented and actually settled. However, the release shall not constitute a final waiver of rights of the insured with respect to claims for damages or expenses if circumstances that are reasonably unforeseen arise resulting in additional costs that would have been covered under the policy but for the release.

(c) If the insured decides not to participate in the mediation process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Mississippi law.

Section 9. Designation Of Administrator

The Department has designated the American Arbitration Association as its Administrator to carry out certain duties and responsibilities under this emergency regulation.

Section 10. Severability

If a court holds any subsection or portion of a subsection of this emergency regulation or the applicability thereof to any person or circumstance invalid, the remainder of the emergency regulation shall not be affected thereby.

Section 11. Effective Date

This emergency regulation shall be effective immediately upon filing with the Office of the Secretary of State of the State of Mississippi.

Adopted this the ___ day of December, 2005.

GEORGE DALE
COMMISSIONER OF INSURANCE