

307

IN RE: HURRICANE LAURA : STATE OF LOUISIANA  
 AND 2021- 1045 : PARISH OF CALCASIEU  
 HURRICANE DELTA CLAIMS : 14<sup>TH</sup> JUDICIAL DISTRICT COURT

*Jean Bollier*  
 DEPUTY CLERK

SCANNED  
AUG - 2 2021

AUG - 2 2021

**SECOND AMENDED CASE MANAGEMENT ORDER**

**REGARDING CERTAIN PROPERTY DAMAGE SUITS ARISING FROM  
HURRICANES LAURA AND DELTA**

On August 27, 2020, Hurricane Laura came ashore near Cameron Parish, Louisiana and traveled through Calcasieu Parish. As a Category 4 (near 5) hurricane, it was the fifth strongest storm to ever impact the United States.<sup>1</sup> The United States government reports that Laura damaged over 400,000 structures, and inflicted over \$19 billion in damage to western Louisiana and southeast Texas.<sup>2</sup> Major Hurricane-force winds, with gusts in excess of 150 mph, covered the entirety of Calcasieu Parish, and inflicted catastrophic damage throughout the entirety of this Court’s jurisdiction. On October 9, 2020, a subsequent, Category 2 hurricane – Hurricane Delta – struck the same area devastated just six weeks earlier by Hurricane Laura, causing additional damage estimated at \$4 billion.<sup>3</sup> Hurricanes Laura and Delta may sometimes hereinafter be referred to as the “Hurricanes,” and the causes of action arising therefrom may sometimes be referred to as “the Hurricane Cases.”<sup>4</sup>

PI

In the months following Hurricanes Laura and Delta, many related lawsuits have been filed and are pending before the Court, with still many more expected to be filed. On March 16, 2021, this Court issued the First Case Management Order related to Hurricane Cases (“Original CMO”). In Act 318 of the 2020 Regular Session the Legislature of Louisiana amended the laws expanding judicial authority related to special masters and mandatory mediation in cases stemming from certain major disasters (“Act 318”).<sup>5</sup>

DEPUTY CLERK  
AUG 02 2021 10:45 AM

<sup>1</sup> Jeff Masters, *Devastating Laura Is Tied as the Fifth-strongest Hurricane on Record to Make Landfall in the Continental U.S.*, YALE CLIMATE CONNECTIONS (Aug. 27, 2020), available at <https://yaleclimateconnections.org/2020/08/devastating-laura-tied-as-fifth-strongest-hurricane-to-make-landfall-in-continental-u-s/>

<sup>2</sup> <https://www.climate.gov/news-features/blogs/beyond-data/2020-us-billion-dollar-weather-and-climate-disasters-historical> <https://www.nesdis.noaa.gov/content/us-billion-dollar-disasters-top-noaa-expert-weighs-in>

<sup>3</sup> AON, *Global Catastrophe Recap* (Oct. 2020) at p. 4, available at [http://thoughtleadership.aon.com/documents/20201111\\_analytics-if-october-global-recap.pdf](http://thoughtleadership.aon.com/documents/20201111_analytics-if-october-global-recap.pdf)

<sup>4</sup> All causes of action concerning damage related to Hurricanes Laura or Delta are subject to this Order, including causes of action where the third-party demand or cross claim is a claim against an insurer by an insured due to damage from the Hurricanes.

<sup>5</sup> Hurricanes Laura and Delta qualify pursuant to R.S. 13:4165(F)(1). A major disaster declaration was made by the President for Calcasieu Parish in Hurricane Laura under FEMA Release No. HQ-20-229 and for Hurricane Delta under FEMA Release No. HQ-20-299. Calcasieu Parish qualified for individual assistance for both Hurricanes (FEMA designation DR-4559-LA and DR-4570-LA).



Act 318 authorizes this court to amend the Original CMO, and, after consultation with and upon the recommendation of the Special Master and in consideration the high volume of cases from Calcasieu Parish in state and federal courts, this Court finds it warranted to amend the Original CMO to best accommodate the adjudication of Hurricane cases in this Court.

Accordingly, this Court's aim continues to be the just and expedient resolution of these related matters, in spite of the increased strain on the Court's resources, and with the primary goal of enabling the Calcasieu Parish community to move forward with crucial recovery efforts, in the aftermath of both Hurricanes Laura and Delta, and the Coronavirus pandemic. In consideration of these aims, after due consideration of the Case Management Order protocol implemented by the United States District Court for the Western District of Louisiana concerning all Hurricane Cases, this Court issues the instant First Amended Case Management Order. **IT IS HEREBY ORDERED** that this Second Amended Case Management Order shall be immediately applicable to all Hurricane Cases and shall replace the Original CMO.

#### **SECTION 1. DISASTER PROTOCOLS FOR INITIAL DISCLOSURES**

The Court has reviewed the Disaster Litigation Initial Discovery Disaster Protocols adopted by the United States District Court for the Western District of Louisiana, applicable to all Calcasieu Parish Hurricane Cases filed in federal court. The Federal Court considered the Disaster Protocols implemented by the U.S. District Court for the Southern District of Texas following Hurricane Harvey.<sup>6</sup> These Disaster Protocols call for prompt sharing of specific information to promote uniformity, to facilitate prompt evaluation of each case, to foster communication between the parties, and to facilitate an expedited mediation procedure.

Accordingly, this Court has adopted the Disaster Protocols attached hereto as Exhibit "A" in the Disaster Protocols Standing Order of March 16, 2021 and makes them applicable to all Hurricane Laura and Hurricane Delta cases filed in this Court.<sup>7</sup> Additionally, **IT IS HEREBY ORDERED** that the disclosures and exchange of information required by the Disaster Protocols Order issued March 16, 2021 shall be due 45 days from the date that defendant files responsive pleadings. This deadline may sometimes hereinafter be referred to

---

<sup>6</sup> *United States District Court for the Southern District of Texas, Disaster Litigation Initial Discovery Protocols, available at <https://www.txs.uscourts.gov/sites/txs/files/Disaster%20FINAL%20Web%20version.pdf>*

<sup>7</sup> **The Standing Order Regarding Initial Discovery Protocols in Certain Property Damage Suits Arising from Hurricanes Laura and Delta together with its Exhibits entered on March 16, 2021 shall remain in force and apply to all Hurricane Cases under this First Amended CMO.**

as the “Disclosure Deadline”. No extension or delay in the time to file responsive pleadings shall extend the Disclosure Deadline to more than 75 days from the original deadline to file responsive pleadings unless the extension is by the consent of all parties or pursuant to an express Order of this Court. **IT IS FURTHER ORDERED** that each party shall supplement their Initial Disclosures at least fifteen days prior to any scheduled mediation pursuant to the CMO. Nothing in this Section prevents other discovery in accordance with the provisions of the Code of Civil Procedure, except that requests for subpoenas for depositions shall not be submitted during the SSP without pre-approval of the Special Master or leave of the Court.

## **SECTION 2. PRIVILEGE**

Documents for which a privilege may properly be asserted include communications that reflect the mental impressions, conclusions, opinions, or theories of an attorney.<sup>8</sup> However, as recognized by the United States District Court for the Eastern District of New York In Re: Hurricane Sandy Cases, “Documents routinely prepared in the ordinary course of business, including but not limited to adjusters' reports, and other expert analyses, including draft reports, are not privileged and should be produced.”<sup>9</sup>

Therefore, **IT IS HEREBY ORDERED** that any party withholding disclosure of any information or documents, where said disclosure is required pursuant to the Disaster Protocols, shall produce a privilege log to opposing counsel on or before the Disclosure Deadline. This privilege log shall detail all information or documents that it declined to produce on the basis of that the material is privileged. The log should include the author of the document, the recipient of the document, the date of the document, and the nature of the privilege asserted.

Any dispute concerning privileged items shall be resolved by contradictory motion before the assigned District Judge. The District Judge may direct that the disputed items be provided to him *in camera* prior to the hearing of the motion.

## **SECTION 3. SPECIAL MASTER AND APPOINTED NEUTRALS**

Considering the foregoing reasons supplied by the Court in the introduction *infra*, the Court finds that exceptional circumstances exist which warrant the appointment of a Special

---

<sup>8</sup> La. C.C.P. art. 1424(A)

<sup>9</sup> United States District Court for the Eastern District of New York, *In Re Hurricane Sandy Cases: Case Management Order No. 1*, p. 10, available at <https://img.nyed.uscourts.gov/files/general-ordes/14mc41cmo01.pdf>.

Master to assist with the efficient and fair administration of all Hurricane Cases. Pursuant to the Court's inherent judicial power and its authority under La. R.S. 13:4165, *et seq*, it is ordered that **THE COURT HEREBY APPOINTS CADE R. COLE, ESQ.** as the Special Master for Hurricane Cases in the 14<sup>th</sup> Judicial District Court.

The Court takes specific notice of his role as Deputy Special Master under the Original CMO and his service as Deputy Special Master for Hurricane Cases, by the United States District Court for Western Louisiana. The Court anticipates that this appointment and continued coordination with the federal Special Master will encourage consistent resolutions of Hurricane Cases across both State and Federal Courts. As part of their appointment, the Court mandates that the Special Master shall proceed with all reasonable diligence, and shall exercise their respective rights and responsibilities to direct the Streamlined Settlement Process as provided in this Order.

**IT IS HEREBY FURTHER ORDERED** that the Neutrals, referenced in Section 4(II)(B), *supra*, are hereby appointed and shall proceed with all reasonable diligence and shall exercise their rights and responsibilities under the Streamlined Settlement Process ("SSP") as the Special Master may direct.

***I. The Special Master***

The Special Master shall administer, coordinate, and preside over the SSP. This authority includes the power to order parties and/or party representatives with full power of settlement to submit briefing, engage in discovery, and attend settlement conferences. Nothing in this part shall prevent regular formal discovery or motions to compel to be filed with and heard by the assigned District Judge.

***II. Compensation of Appointed Neutrals***

The Special Master and all other appointed neutrals under the SSP (the "Appointed Neutrals") shall be compensated in the amount of:

- A. \$400 per hour for the Appointed Neutrals;
- B. \$250 per case for the Special Master for administrative expenses in administering, scheduling, organizing, and coordinating the Streamlined Settlement Process for each case amongst the parties as well as with the Appointed Neutrals; and
- C. all actual expenses of the Appointed Neutrals, including but not limited to travel, meeting rooms, telephone, and electronic audio or video conference means.

Unless otherwise directed by mutual agreement of the parties or as otherwise directed by the Special Master, all of the above fees and expenses shall be paid twenty-five percent (25%) by the plaintiff(s) and seventy-five (75%) by the defendant(s).

### **III. Role of Appointed Neutrals**

- A. The Special Master and Appointed Neutrals may communicate *ex parte* with the Court when deemed appropriate by the Special Master, at his discretion, without providing notice to the parties, including communication certifying that the parties have complied with the requirements of the SSP.
- B. The Special Master and Appointed Neutrals may initiate contact and communicate with counsel for any party as he or she deems appropriate with respect to the efficient administration and management of the SSP.
- C. The Special Master and Appointed Neutrals, the parties, and those assisting the foregoing shall be bound by the confidentiality of the settlement discussions.
- D. The Special Master may designate any of the Appointed Neutrals to act as his deputy from time to time and to perform any duties of the Special Master.

### **IV. Notice to the Special Master.**

Any party to a Hurricane Case may file a motion with the assigned District Judge requesting an opt out from the SSP for good cause shown in writing within the applicable deadline (*see* Section 4 below). **IT IS HEREBY ORDERED** that any party filing an opt out motion shall copy the Special Master, and that the parties shall provide notice of the Court's Order on the motion to opt out to the Special Master, regardless whether the motion to opt out is granted or denied.

**IT IS FURTHER ORDERED** that any prior opt out pursuant to the Original CMO be and is hereby vacated, and that any party that previously opted out shall have fifteen (15) days from the date of receipt of a copy of this Order (including by email to their counsel of record) to file a Motion to Opt Out detailing their good cause for why they should be allowed to opt out of the SSP. The Court may set the Motion to Opt Out for hearing or decide it in chambers.

**IT IS FURTHER ORDERED** that counsel for any party to a Hurricane Case that has been provided a copy of this Order shall be required to provide email notice to the Special Master of the initial pleadings and all subsequent filings in any Hurricane Case (knowledge of this provision is presumed where counsel for the party has been provided a copy of this Order). The Special Master shall send an Initial Informational Package on the SSP to all parties and/or counsel of record for Hurricane Cases subject to the SSP.

## **SECTION 4. STREAMLINED SETTLEMENT PROCESS ("SSP")**

Within 30 days of the filing of the defendant's responsive pleading (or within 15 days of the transmittal to their counsel of a copy of this Order, including by electronic or other means – whichever is later), either party may file a motion to opt out of this Streamlined Settlement Process for good cause shown. Unless the Court authorizes an opt out, then the parties shall participate in the two-staged Streamlined Settlement Process, which is described as follows:

### **I. First Stage: Settlement Conference**

Within 30 days of the Disclosure Deadline in all Hurricane Cases, all parties shall conduct an informal settlement conference among all parties and their counsel. Within 15 days of the Disclosure Deadline counsel for the plaintiff(s) and counsel for the defendant(s) shall meet to confer and discuss a mutually convenient time, date, and manner for the conference. In light of the COVID-19 pandemic as well as the desire

to resolve the Hurricane Cases as expeditiously as possible, settlement conferences should be conducted, where possible, by phone or audiovisual communication, including but not limited to Zoom, Skype, or similar platforms.

Counsel for each plaintiff and for each defendant must have full authority to resolve the case from their clients, who shall be readily available by telephone if circumstances for that particular settlement conference require assistance.

## ***II. Second Stage: Mediation***

Cases that do not resolve during the initial settlement conference shall be set for a formal mediation. The parties shall provide the Special Master written notice (including by email and preferably jointly) of completion of the First Stage along with a request for mediation. The Special Master shall then assign each Hurricane Case to an Assigned Neutral from the court approved list found in Paragraph B of this Subsection, and it is the goal that Assigned Neutrals complete mediation within 90 days of appointment. The Special Master (or Appointed Neutral for the case) may set a scheduling conference, or communicate with counsel about availability through other means, but shall seek to schedule the mediations in an expeditious manner at mutually convenient times and dates for all parties.

### **A. Conduct of Mediation**

After scheduling of an agreed mediation, counsel for each party shall submit confidential statements solely to the appointed neutral. The appointed neutral shall determine, after conferring with the parties, on the length of the confidential mediation statements and the permissible number of exhibits attached thereto.

Plaintiff(s) shall be present in-person along with counsel (subject to accommodations approved by the case's Appointed Neutral). Defense counsel shall also attend in-person. A representative from defendant(s) is encouraged to attend, but unless otherwise directed by the Special Master the defendant(s) representative shall not be required to attend if counsel for the defendant has full authority to resolve the case. In addition, a representative of the defendant shall be readily available by telephone, if circumstances for that particular mediation require assistance.

To the extent agreed by the parties and the case's Appointed Neutral, this mediation conference may be conducted by phone or other means of electronic audio or video communication, including but not limited to Zoom, Skype, or similar platforms.

As part of this Streamlined Settlement Process, the attendees may each make opening statements but there shall be no live witness testimony.

### **B. List of Neutrals**

The Court hereby initially designates and appoints the following individuals as "neutrals" (mediators) for the SSP:

- 1) Any person designated by the Special Master after consultation with the Court who is qualified pursuant to R.S. 13:4165(F)(5), including: H. Ward Fontenot, Patrick J. Hron, Margaret "Peggy" Landry, John W. Perry, III, Emmett C. Sole, Elizabeth Middleton, Richard J. Hymel, or Randall K. Theunissen; and
- 2) Any person designated as a neutral pursuant to the United States District Court for Western Louisiana's CMO, including as amended from time to time.

### **C. Neutral Training**

The Special Master may undertake to provide special training to the neutrals, including coordinating participation in training prepared for the Streamlined Settlement Process. The Special Master and his deputy may jointly form a plaintiffs' liaison committee and a defense liaison committee or may coordinate with any related Federal Court liaison committees for Hurricane Cases. If formed, the Special Master or his deputy may solicit input and responses concerning commonly occurring legal issues that the liaison committees, from experience, believe may arise in a large number of these cases, along with relevant case law or other authority addressing these issues. While the ultimate determination of any such common issue may well be fact driven, and the outcome of any legal issue will be determined by the Court, the Special Master or his deputy may seek this information in order to educate and fully prepare the appointed neutrals with the hope of expediting the settlement process. The Special Master or his deputy may facilitate discussions by and among the appointed neutrals to promote, to the extent possible, consistency in the resolution of cases.

### **III. *Extensions of Time***

Upon a joint request by the parties, or for other good cause shown, the Special Master or his deputy may extend any deadline specified in this Order by up to 15 days.

## **SECTION 5. COURT APPOINTED UMPIRES REQUIRED UNDER POLICIES**

If an insurance policy implicated in a Hurricane Case provides for court appointment of a neutral or third appraiser for valuation disputes (hereinafter referred to as an "Umpire"), any request for the appointment by this Court of an Umpire shall only occur if the parties have been unable to agree on their own.

### **I. *Where Parties HAVE been allowed to Opt Out of the SSP***

If any party has been permitted to opt out of the SSP following a timely motion for the same, any party requesting appointment of an Umpire shall file a motion requesting same with the case's assigned District Judge, which motion shall be set for contradictory hearing.

Counsel for either or both the Insured and the Insurer may also submit a joint motion requesting appointment of an Umpire to the Civil Duty Judge, who may agree to hear the motion during their respective duty week.

### **II. *Where Parties Have NOT Opted Out of the SSP***

In all other cases, any request for the appointment by the Court of an Umpire shall be made in writing no later than 14 days following the filing of the defendant's responsive pleading. Any motion or request for this Court's appointment of an Umpire shall be submitted to the Special Master in the same manner as provided for a discovery dispute under the SSP, and the parties shall notify the Special Master and transmit the Umpire request to the Special Master via email at ColeFirm@colelaw.us . The deadline may be extended by the Special Master in exceptional circumstances.

### **III. *Umpire-Only Filing***

If a requesting party is seeking court appointment of an Umpire and no case is otherwise filed or pending before this Court (an "Umpire Only Filing"), then the parties shall follow the same procedures in Subsection 5(II). Any such request shall be made in writing no later than 14 days following the filing of the defendant's responsive pleading, and any such motion or request for this Court's appointment of an Umpire

shall be referred to the Special Master under the above captioned general docket created for the Hurricane Cases. The parties shall notify the Special Master and transmit the Umpire request to the Special Master via email at ColeFirm@colelaw.us. The deadline may be extended by the Special Master in exceptional circumstances.

An Insurer is required to provide written notice of the request to any known counsel for the Insured (or directly to an unrepresented Insured). An Insured is required to provide written notice of the request to any known counsel of Insurer (if any) or alternatively to the Insurer's primary point of contact on the claim with Insured. The appraisers previously selected by each party shall also be provided notice, and their contact information (phone and email address) shall be provided in the request for appointment of an Umpire.

A written report and recommendation following the Umpire's appointment shall be issued to the parties, and shall be deemed applicable to the parties in the same manner as if made by an order of the Court unless the report and recommendation is overturned by the assigned District Judge following a motion filed with the assigned District Judge within seven days of transmittal of the written report.

In an Umpire Only Filing, the Special Master shall provide the report and recommendation to the parties, who will in turn provide the same to the civil Duty Judge as of the time of the issuance of the report and recommendations. Similarly, the recommendation shall be deemed applicable to the parties in the same manner as if made by an order of the Court unless the report and recommendation is overturned by the civil Duty Judge following a motion filed with the civil Duty Judge within seven days of transmittal of the written report.

#### **SECTION 7. CLERK OF COURT AND NOTICE**

A Plaintiff filing a Hurricane Case should note on its cover letter, in **ALL CAPS** and **RED FONT**, that the matter is a "HURRICANE CASE". **Each caption and on each pleading, "HURRICANE CASE" in bold print shall follow the docket number.** If the Special Master learns the Order has not been entered by the Clerk of Court, he shall serve it on the parties by email and may file proof of the same into the record at no cost.

In all subsequently filed Hurricane Cases, a copy of this order shall be served on the defendant(s) along with the Petition and Citation. The Clerk of Court shall include a reference that the Case Management Order is served with the Petition in the Citation issued. The Clerk of Court shall also provide a copy to the plaintiff by any authorized means.

The Clerk of Court shall transmit via email, at least weekly, to the Special Master the docket numbers, case caption, and attorney contact information for any Hurricane Cases filed.





Any party making any filing in a Hurricane Case subject to this Order shall serve a courtesy copy on the Special Master in the same manner as enrolled counsel via email at ColeFirm@colelaw.us.

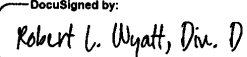
**SECTION 7. COURT SUPERVISION**

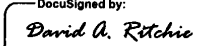
The Disaster Protocols and Streamlined Settlement Process shall, at all times, be subject to the ultimate control and supervision of the Court. This Case Management Order for Hurricane Cases is subject to modification pursuant to further orders of this Court. All provisions of this Order shall become effective August 1, 2021 and shall be applicable to all cases whether then pending or thereafter filed.

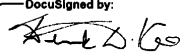
**SO ORDERED** on this  2  day of  August , 2021, at Lake Charles, Louisiana.

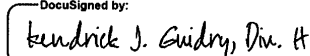
DocuSigned by:  
  
HON. G. MICHAEL CANADAY  
Chief Judge

DocuSigned by:  
  
HON. CLAYTON DAVIS  
District Judge, Division B

DocuSigned by:  
  
HON. ROBERT L. WYATT  
District Judge, Division D

DocuSigned by:  
  
HON. DAVID A. RITCHIE  
District Judge, Division E

DocuSigned by:  
  
HON. DERRICK KEE  
District Judge, Division F

DocuSigned by:  
  
HON. KENDRICK J. GUIDRY  
District Judge, Division H