MISSISSIPPI DEPARTMENT OF INSURANCE
EMERGENCY REGULATION NO. 2007-3

SPECIAL NON-BINDING ARBITRATION PROGRAM FOR PERSONAL LINES RESIDENTIAL INSURANCE CLAIMS RESULTING FROM HURRICANE KATRINA

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Section 1. Authority

The 2005 Hurricane season was 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.

In response in part to the devastation of Hurricane Katrina, the Mississippi Department of Insurance ("Department") sought the passage of Senate Bill 2381, 2006 Regular Legislative Session, which was passed by the Mississippi Legislature, signed by Governor Barbour on March 1, 2006, and made effective that date. Codified as Miss. Code Ann. § 83-1-47, this statute gives the Commissioner of Insurance the authority to establish a non-binding, nonadversarial alternative dispute resolution procedure for the handling of personal lines residential insurance claims.

Furthermore, 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.

This Emergency Regulation is promulgated by the Commissioner of Insurance pursuant to the authority granted to him by Miss. Code Ann. §§ 83-1-47; 83-5-1; 83-5-29 through 83-5-51; as well as the provisions of Mississippi Department of Insurance Regulation No. 88-101, said Regulation being the Rules of Practice and Procedure before the Mississippi Insurance Department.

Section 2. Purpose and Scope

Mississippi Insurance Department Regulation 2005-2 was adopted by the Commissioner of Insurance on December 20, 2005, to allow for all Mississippi insureds to enter into a non-binding voluntary mediation conference with their insurance company regarding any claim disputes arising from Hurricane Katrina. This program has allowed over 3400 insureds' claim disputes to be resolved, and has seen an 83% successful resolution for all insureds who have participated in the Mississippi Insurance Department Hurricane Katrina Mediation Program.

As a result of the success of the Department's Hurricane Katrina Mediation Program, the Department was contacted by U.S. District Judge L.T. Senter, Jr., who is presiding over most of the Hurricane Katrina lawsuits filed in the U.S. District Court in South Mississippi. Judge Senter asked the Department to include in its regulation a mediation program for those insureds who had lawsuits pending in his court. The Commissioner of Insurance thereby adopted Mississippi Insurance Department Regulation 2006-4, which allowed any court of competent jurisdiction to order any party in litigation to participate in the Mississippi Department of Insurance Hurricane Katrina Mediation Program. This program is experiencing a successful resolution rate of approximately 50% for all litigants who participate.

However, even with the success of both mediation programs, there are insureds who still do not have their Hurricane Katrina claims resolved. Representatives of the Department have been working on multiple fronts in an effort to find other means to have claims paid and lawsuits resolved so Mississippi can continue its rebuilding and recovery.

This Emergency Regulation establishes a special non-binding arbitration program for personal lines residential insurance claims resulting from Hurricane Katrina. It creates procedures

for notice of the right to arbitration, request for arbitration, assignment of arbitrators, payment for arbitration, and the conduct of arbitration proceedings.

This program will allow insureds another avenue to try and have their claim resolved without requiring the insured to settle or extinguishing their right to file legal action if the matter is not resolved. It will also allow Judge Senter and any other court of competent jurisdiction to order any litigant before their Court to participate in this non-binding arbitration program in addition or as an alternative to non-binding mediation.

Except as otherwise provided in this Regulation, the procedures established by this Regulation are available to all first party claimants who have not commenced 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 arbitration procedures established hereunder. This Regulation does not supersede an insured's right to commence an appraisal process under their policy or to request non-binding mediation. This 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 arbitration procedures established under this 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 arbitrate a claim involving a lesser amount, a claim involves a dispute in which the difference between the positions of the parties is $5000.00 or more. Claim does not include a dispute with respect to which the insurer has reported allegations of fraud to the Department or any law enforcement agency, 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) "Arbitrator" means an individual selected by the Administrator designated by the Department to arbitrate disputes pursuant to this regulation. Arbitrators will be selected from a panel of arbitrators established and maintained by the Administrator.

(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 Arbitrate

Within fourteen (14) days of the date of the filing of this Emergency Regulation, insurers shall send a Notification of the Right to Arbitrate to all insureds who have a disputed Hurricane Katrina claim. 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 Arbitration

After ten (10) days from the date of the notice, an insured may request arbitration by writing the Administrator at American Arbitration Association, Attn: MS Insurance Arbitration, 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 Msinsarbitration@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 arbitration; 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. Arbitrator and Scheduling of Arbitration

A. Appointment of Arbitrator

A list of available arbitrators will be posted online at www.adr.org. The parties are encouraged to agree to an arbitrator from this list and to advise the Administrator within ten (10) days of the Request of Arbitration of their agreement. If the parties are unable to agree upon an arbitrator, the Administrator shall make the appointment from members of the panel.

B. Disqualification of Arbitrator

The parties shall be given written notice at least twenty (20) days prior to the Arbitration Conference of the name of the Arbitrator. The parties shall have seven (7) days to file a written request that the Arbitrator be disqualified. A written request for disqualification may be made for good cause; specifically, good cause shall consist of any substantive conflict of interest between a party and the arbitrator; an inability of the arbitrator to handle the conference competently, with diligence or good faith; or other reason provided by applicable law. Any request for disqualification must be made in good faith. Any request to disqualify not made in good faith will result in the request for disqualification being denied. If an arbitrator is disqualified for good cause, a new arbitrator will be named within five (5) days. The Administrator shall make the determination if an arbitrator should be disqualified.

C. Scheduling of Arbitration

The Administrator will schedule the arbitration conference. The Administrator will attempt to facilitate reduced travel and expense to the parties and the arbitrator when selecting an arbitrator and scheduling the arbitration conference. The Administrator shall confer with the arbitrator and all parties prior to scheduling an arbitration conference. The parties shall receive at least twenty (20) days written notice of the date, time, and place of the arbitration conference, and the designation of the arbitrator. The insurer shall notify the Administrator as soon as possible after settlement of any claim that is scheduled for arbitration pursuant to this Regulation.

Section 7. Arbitration Conference

A. Exchange of Information

At least two (2) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

B. Attendance at Conference

The Arbitrator shall maintain the privacy of the conference. Any person having a direct interest in the arbitration is entitled to attend the conference. The arbitrator shall have the power to

require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representative. However, the Department reserves the right to have a representative present at any arbitration conference conducted pursuant to this Regulation.

The Arbitrator may postpone any conference upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative. 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.

C. Representation

A party may be represented by counsel or their authorized representative. A public adjuster contracted by the insured may attend the conference, but the insured must also be present at the conference. A party intending to be represented shall notify the other party and the administrator of the name and address of the representative at least five (5) days prior to the date set for conference.

D. Conduct of Proceeding

The arbitrator shall have the right to require witnesses to testify under oath administered by any duly qualified person. The insured shall present evidence to support its claim. The insurer shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

The arbitrator, in its discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decisions of which could dispose of all or part of the case.

E. Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the arbitrator and all the parties, except where any of the parties is absent, in default or has waived the right to be present. However, the arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

The arbitrator shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant. The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

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.

F. Confidentiality

Confidential or privileged information disclosed to an arbitrator by the parties or by witnesses in the course of arbitration shall not be divulged by the arbitrator. All records, reports, or other documents received by an arbitrator while serving in that capacity shall be confidential. The arbitrator shall not be compelled to divulge such records or testify in regard to the arbitration in any adversary proceeding or judicial forum. All statements made and documents reviewed at the arbitration conference shall be deemed settlement negotiations in anticipation of litigation.

Neither the Department, the Administrator, nor any arbitrator in a proceeding under this Regulation is a necessary or proper party in judicial proceedings related to the arbitration.

G. Mediation

At any stage of the proceedings, the parties may agree to conduct a mediation conference under the Mississippi Department of Insurance Hurricane Katrina Mediation Program as established pursuant to Regulation 2005-2, as amended. The mediator shall not be an arbitrator appointed to the case. Where the parties to a pending arbitration agree to mediate under this Regulation, no additional administrative fee shall be required to initiate the mediation.

Section 8. Cost of Arbitration

A. Administrative Fee

Within five (5) days of the insurer's receipt of the request for arbitration, the insurer shall pay a non-refundable administrative fee in the amount of $250.00 to the Administrator, which shall be used to defer the expenses of the Administrator.

B. Fee to Arbitrator

Arbitrators shall receive $600.00 for a three (3) hour arbitration conference, which shall be paid by the insurer. Arbitrators shall not receive costs or expenses.

The insurer shall pay $600.00 to the Administrator for the arbitrator's fee not later than five (5) days prior to the date of the arbitration conference. If the arbitration is cancelled for any reason more than 120 hours prior to the scheduled arbitration time and date, the insurer shall pay $50.00 to the Administrator for the arbitrator's fee instead of $200.00 per hour. If the conference is cancelled within 120 hours of the scheduled time, the insurer shall pay $600.00 to the Administrator for the arbitrator's fee.

C. Length of Arbitration

Each arbitration shall be scheduled for three (3) hours. The parties and the arbitrator may agree to extend the arbitration conference time. If an arbitration conference is extended beyond three (3) hours, the Arbitrator shall receive $200.00 an hour for any time over the three (3) hour conference. The insurer shall pay the additional costs to the Administrator within five (5) days after the arbitration conference.

D. Failure to Appear

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 arbitration 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 arbitrator's fee whether or not good cause exists. Failure of a party to arrive at the arbitration 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.

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.

Section 9. Post Arbitration Hearing

A. Findings of the Arbitrator

Within fourteen (14) days of the Arbitration conference, the arbitrator shall submit to the Administrator and the parties a written findings of fact. The written findings of fact shall state what remedy or relief that the arbitrator deems as just and equitable and within the scope of the agreement of the parties. The Findings of the Arbitrator are confidential and shall not be used in any other proceeding. The arbitrator shall not make any finding relating to the award of punitive damages.

Within seven (7) days of the issuance of the Findings of the Arbitrator, the parties shall contact the Administrator in writing to either accept or refuse the Findings. If the parties accept the Findings, and an award is to be made to the insured, the insurer has seven (7) days to disburse the award to the insured.

B. Settlement of Parties

If at anytime throughout this process the parties are able to reach a settlement, the arbitrator shall include a copy of the settlement agreement with the status report. If a settlement is reached, the insured shall have three (3) business days to 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 arbitration conference. A settlement agreement can be rescinded by contacting the Mississippi Department of Insurance at (601) 359-3581. 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. If an award is to be made to the insured, the insurer has seven (7) days to disburse the award to the insured.

C. Non-binding Arbitration

This program is non-binding; therefore, neither the insured nor insurer must settle the claim or accept the Findings of the Arbitrator. Nothing in this Regulation shall preclude an insured's right to pursue any other remedy, including but not limited to, mediation, the appraisal process set forth in the insured's insurance policy, litigation, or any other dispute resolution procedure available under Mississippi law.

Section 10. Designation of Administrator

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

Section 11. Court Ordered Arbitration

As stated above, this Regulation shall apply and be available to all first party claimants who have not commenced litigation; however, notwithstanding other provisions of this Regulation, this non-binding arbitration program shall be available to any party ordered to participate in this program by a court of competent jurisdiction.

Section 12. Immunity

Parties to an arbitration under this Regulation shall be deemed to have consented that neither the Department, the Administrator nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under this Regulation.

Section 13. Severability

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

Section 14. Effective Date

This Emergency Regulation shall be effective upon filing with the Office of the Secretary of State of the State of Mississippi.

Signed this the 30th day of March, 2007.

GEORGE DALE
COMMISSIONER OF INSURANCE

NOTIFICATION LETTER

[Date]

[Policyholder Name and Address]

RE: Right to Arbitration

Dear Policyholder:

George Dale, Commissioner of Insurance for the State of Mississippi, has adopted an emergency regulation to facilitate fair and timely handling of residential property insurance claims arising out of Hurricane Katrina that devastated so many homes in Mississippi. The emergency regulation gives you the right to attend a non-binding arbitration conference with your insurer in an effort to settle any dispute you have with your insurer about your claim. **Please note that in order to request an arbitration conference, you must have a disputed claim, meaning that the difference between the positions of you and your insurance company is $5000.00 or more.** You can start the arbitration process ten (10) days after the date of this notice if you have a disputed claim by contacting the Administrator, American Arbitration Association. An independent arbitrator, who has no connection with your insurer, will be in charge of the arbitration conference.

Please be aware that from the date of this notice, there is a ten (10) day period that must lapse before you can request arbitration. To request arbitration, you may contact the Arbitration Administrator in writing at American Arbitration Association, ATTN: MS Insurance Arbitration, 13455 Noel Road, Suite 1750, Dallas, TX 75240; by phone at 1-800-426-8792; by fax at 972-490-9008; or on-line at Msinsarbitration@adr.org. Your request should include the following information:

- Your claim and policy number;
- The address and location of the property;
- A daytime telephone number , address, and, if possible, an e-mail address where you can be reached should the Arbitration Administrator need to contact you;
- A brief description of the nature of the dispute;
- The name of the insurer and the name, address and phone number of the insured or the insured's contact person for scheduling arbitration; and,
- 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.

Once a request for arbitration is received, the Administrator will contact you to schedule your arbitration conference.

If you have further questions concerning this letter, you may contact [name of the insurer and contact person or division] at [phone number].

Sincerely,
[Insurer]

Exhibit "A"