

IMPORTANT NOTICE OF CLASS ACTION LITIGATION AND PARTIAL SETTLEMENT

JANICE CLABORNE, ET AL

VERSUS

THE HOUSING AUTHORITY OF NEW ORLEANS

NO.: 2001-20605 DIV. "H" SECTION: 12, CDC

ORLEANS PARISH, LOUISIANA

SUMMARY EXPLANATION OF THE SETTLEMENT

- A. On December 14, 2001, a Class Action Lawsuit was filed against The Housing Authority of New Orleans, HANO, seeking damages for those HANO residents exposed to Mold.
- B. During the course of the litigation, Guste Homes Resident Management Corporation and B.W. Cooper Resident Management Corporation were added as party defendants.
- C. It was discovered that Guste and Cooper had insurance that might apply to the claims asserted in the litigation, but the rest of the HANO properties were uninsured.
- D. Certain insurers have offered to settle the claims of those residents who lived in the Guste and Cooper properties.
- E. Claims against Guste and Cooper and insurers of Guste and Cooper not participating in the Settlement still remain.
- F. Claims against HANO by residents of properties other than Guste and Cooper are not part of the Settlement.
- G. This Settlement is only for claims asserted against Jefferson Insurance Company of New York, Canal Indemnity Company, Scottsdale Insurance Company and Odyssey Re (London) Limited, f/k/a Sphere Drake Insurance, PLC, by the members of the class who were residents of Guste and Cooper during the applicable time period of the class and who may be eligible for payments under the Settlement.
- H. For additional information and details regarding this Settlement, please see the pleadings filed herein in connection with the Settlement between the residents of Guste and Cooper and Jefferson Insurance Company of New York, Canal Indemnity Company, Scottsdale Insurance Company and Odyssey Re (London) Limited, f/k/a Sphere Drake Insurance, PLC.

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A court authorized this Notice. This is not a solicitation from a lawyer.

TO: The **"Litigation Class:"**

All leaseholders and other permanent residents of **THE HOUSING AUTHORITY OF NEW ORLEANS** from 1998 to August 29, 2005, who were adversely affected by the presence of toxic mold in their apartments as a result of HANO, Guste or B.W. Cooper Resident Management Corporation's breach of their contracted duty with HUD pursuant to 26 CFR Part 5 § 5,703(f) to maintain said apartments and common areas "free of mold" for the benefit of HANO, Guste RMC or Cooper RMC's leaseholders and their permanent residents,

and

The **"Partial Settlement Class:"**

All leaseholders and other permanent residents of (1) any facility owned, controlled, managed, or operated by **THE HOUSING AUTHORITY OF NEW ORLEANS** or (2) any facility controlled, managed, or operated by the Guste Homes Resident Management Corporation or B.W. Cooper Resident Management Corporation including, without limitation, all leaseholders and other permanent residents of the public housing facilities commonly known as the Guste Homes, B.W. Cooper Homes, and Calliope Projects, in all cases from January 1, 1998 to the date of preliminary approval of the Partial Settlement Class described in this notice.

READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS

- * Certain representative plaintiffs (the "Class Representatives") have sued The Housing Authority of New Orleans ("HANO"), the Guste Homes Resident Management Corporation ("Guste"), the B.W. Cooper Resident Management Corporation ("B.W. Cooper," and, with Guste, the "RMCs"), and certain of their actual or alleged insurers on behalf of all individuals meeting the Litigation Class description set forth above.
- * The Court has allowed the lawsuit to proceed as a class action on behalf of those persons who resided in HANO apartments from 1998 onward.
- * The Court has not yet decided whether any of the defendants did anything wrong because lawyers for the class must prove the claims against the defendants at trial.
- * However, in order to avoid such a trial, certain of the defendant-insurers have agreed to settle the claims made against them, as well as certain claims made against HANO and the RMCs to the extent any such claims may be subject to insurance they issued (the "Partial Settlement").
- * *Not all claims in the case are being settled*, and the Class Representatives will continue pursuing the remaining claims against HANO, the RMCs, and other insurance companies that may have provided insurance coverage to HANO or the RMCs.
- * This Notice informs you of the nature of the lawsuit and expected trial plan as well as the Partial Settlement with the settling insurers.

Trial Summary

- * The trial of this matter will proceed in two phases. In "Phase 1," Plaintiffs' counsel will attempt to prove that HANO and the RMCs failed to properly maintain their public housing

developments, that HANO had a duty to keep its housing developments “free of mold,” and that HANO breached this duty on a class-wide basis. If Plaintiffs prevail in demonstrating that HANO and the RMCs had a duty to keep apartments “free of mold,” and breached that duty, individual Plaintiffs will then be able to present individual claims to the Court, as part of “Phase 2,” and will be given the opportunity to demonstrate that they have suffered losses as a result of any breach of a duty proven as part of Phase 1. The Defendants will be entitled to present defenses to class-wide issues, as part of Phase 1, and to Plaintiff-specific issues, as part of Phase 2.

- * You have the legal right and option in this lawsuit to (1) provide a Notice of Intent to Make a Claim (“Notice of Intent”), in which case you may be contacted in the future in order to make and substantiate a claim; (2) do nothing in response to this notice, in which case you will have to make a claim in the future in the event Plaintiffs are successful in Phase 1; (3) if you wish to make a claim related to the Partial Settlement set forth herein, submit a Notice of Intent form no later than **June 26, 2020** (post-marked or otherwise received by the Claims and Notice Administrator no later than midnight); or (4) ask to be excluded from the class action on or before **April 27, 2020** (post-marked or otherwise received by the Claims and Notice Administrator no later than midnight), in which case you will not be individually contacted, and you will never be able to submit a claim in this case. These options are explained further below. You also have the right to object to the Partial Settlement, which is explained further below.
- * Submission of a Notice of Intent enables the Court and counsel to individually contact you in the future, and provide further information about your options and the requirements for potentially submitting and substantiating.
- * Further notice will be made following Phase 1, in newspapers and – if addresses are available – by mail or email, if plaintiffs succeed on their claims. If you do not submit a Notice of Intent now, then you may still receive information in the future via newspaper advertisements or (*if your contact information is already in the possession of counsel*) via mail or email.

Settlement Summary [B.W. Cooper and Guste Homes Residents only]

- * Plaintiffs, HANO, and the RMCs have asserted that certain of the claims that will be addressed at trial are subject to insurance coverage provided by various insurance companies, including Canal Indemnity Company, Scottsdale Insurance Company, Jefferson Insurance Company of New York, and Odyssey Re (London) Limited, f/k/a Sphere Drake Insurance, PLC. These insurers (the “Settling Insurers”) all deny that any such coverage exists. They further deny that HANO or the RMCs have done anything wrong and deny that this matter can properly proceed to trial on a class-wide basis.
- * In order to avoid a trial on such claims, the Settling Insurers have agreed to pay **\$3,760,000** to resolve the claims made against them, and to resolve all claims made against any of HANO and the RMCs to the extent any such claims are or could be subject to any policy of insurance issued by any of the Settling Insurers.
- * Subject to Court approval, this money will be paid into a fund that will be distributed, at the direction of the Court, at a later date.
- * This is a partial and not final settlement of this matter. As it only includes B.W. Cooper and Guste Homes, the matter will continue to trial as to all claims that are not the subject of this Partial Settlement with the Settling Insurers.

BACKGROUND OF THIS CASE

On December 17, 2001, certain “Representative Plaintiffs” filed a class action petition for class certification and damages on behalf of themselves and others similarly situated, seeking damages related to their alleged exposure to “toxic” mold while living in housing developments operated by HANO. On April 2, 2014, the Court heard oral arguments on the issue of class certification. On June 30, 2014, the Court granted Plaintiffs’ motion to certify the class, defining the class as follows.

All leaseholders and other permanent residents of THE HOUSING AUTHORITY OF NEW ORLEANS from 1998 who were adversely affected by the presence of toxic mold in their apartments as a result of HANO, Guste or B.W. Cooper Resident

Management Corporation's ("RMC") breach of their contracted duty with HUD pursuant to 26 CFR Part 5 § 5,703(f) to maintain said apartments and common areas "free of mold" for the benefit of HANO, Guste RMC or Cooper RMC's leaseholders and their permanent residents.

Subsequently, the Court modified the foregoing definition, defining the "Litigation Class" as:

All leaseholders and other permanent residents of **THE HOUSING AUTHORITY OF NEW ORLEANS** from 1998 to August 29, 2005, who were adversely affected by the presence of toxic mold in their apartments as a result of HANO, Guste or B.W. Cooper Resident Management Corporation's breach of their contracted duty with HUD pursuant to 26 CFR Part 5 § 5,703(f) to maintain said apartments and common areas "free of mold" for the benefit of HANO, Guste RMC or Cooper RMC's leaseholders and their permanent residents.

On September 5, 2019, the Court ordered that this important Notice of Class Action be communicated to all potential class members. If you meet the definition of either the Litigation Class, the Partial Settlement Class, or both then this notice applies to you. **YOU WILL BE BOUND BY THE OUTCOME OF THE LITIGATION CLASS AND/OR PARTIAL SETTLEMENT CLASS** unless you formally **OPT-OUT** on or before **April 27, 2020**.

If you do not opt-out, you will be bound by all decisions of the court, whether favorable or not, regarding any and all matters asserted in this action. Additionally, you will be bound by the terms of the Partial Settlement, assuming the Court approves that settlement. Your rights, if any, with respect to future recoveries (made through further settlements or trial) will be determined in the pending lawsuit and you may be entitled to present your specific claims in the future. You may participate in the Partial Settlement and future recoveries, whether by settlement or judgment, subject to deductions for costs, expenses, and attorney fees as approved by the Court. The costs are expenses that will be advanced by the attorneys representing the class. The amount of costs and expenses and any attorney fees paid to the attorneys representing the class will be determined by the Court at the conclusion of the litigation and will be deducted from any settlement or judgment obtained. Class members will not be personally responsible for Class Counsel's attorney fees or costs.

You are further advised that in certifying this class action and ordering the issuance of this Notice, the court is not suggesting that the class representatives will receive money, because the Court has not made any decision on the merits of the controversy nor on the merits of any claim. Nor has it made a determination as to who will be able to participate in the Partial Settlement or how payments will be allocated. The Court will make determinations in the future as to who qualifies for payments from the Partial Settlement and in what amounts.

As to future potential recoveries, the class representatives must prove their claims in two stages, as noted above, with issues related to class-wide claims and defenses to be determined at a trial **on a date to be announced** as part of "Phase 1." If Plaintiffs are successful in Phase 1, the Court will set a schedule as to "Phase 2," where you will be entitled to present your individual claims to the Court in order to make claims in addition to any claim you may have in connection with the Partial Settlement.

You do not need to attend Phase 1 of the trial. Class Counsel will present the case for the Class and the defendants will present their defenses. You or your own lawyer are welcome to come at your own expenses. We do not know how long Phase 1 will take.

If Plaintiffs do not prevail as to Phase 1, there will be no Phase 2, although future determinations will be made as to who qualifies for payments from the Partial Settlement and any future settlements, if any. If you do not opt out, you will be barred from making any recovery against any Defendant related to any of the claims at issue in this litigation, except to the extent that you may qualify for a payment from the Partial Settlement. If you do opt out, you will not be eligible for any payments for the Partial Settlement, or anything in this case.

All persons or entities making claims will be subject to the rules and penalties of the Court with regard to making of groundless claims and you will be required to supply such proof of your claims as the Court may deem necessary. You have the right, if you wish, to have an attorney of your choice present any claim you allegedly have for damages caused by the defendants; however, you

will be personally responsible for any additional fees and expenses charged by your personal attorney.

BACKGROUND OF THE PARTIAL SETTLEMENT [B.W. Cooper and Guste Homes Residents only]

The representative plaintiffs maintain that the Canal Indemnity Company, Scottsdale Insurance Company, Jefferson Insurance Company of New York, and Odyssey Re (London) Limited, f/k/a Sphere Drake Insurance, PLC (referred to in this notice as the “Settling Insurers”) provided insurance coverage to the RMCs and, in certain cases, to HANO, as an additional insured, for the following coverage periods:

Guste RMC	April 26, 1995 to April 26, 1996 July 3, 1999 to January 6, 2000 January 6, 2001 to November 9, 2001 November 9, 2001 to June 4, 2002 July 10, 2002 to July 21, 2003
BW Cooper RMC	October 2, 2000 to October 2, 2001 October 24, 2001 to October 24, 2002 October 24, 2002 to October 24, 2003

Additional information regarding the specific policies issued by the Settling Insurers are set forth in Section I of the STIPULATION OF CLASS ACTION PARTIAL SETTLEMENT AND RELEASE, WITH RESERVATION OF RIGHTS, which is available on the class action website (housingauthorityofneworleansmoldlitigationclassaction.com).

Certain of the Settling Insurers deny that they provided the foregoing coverages to the RMCs or HANO or that claims made against the coverages they have provided were made within the period allowed by the applicable statute of limitations. All the Settling Insurers deny that HANO or the RMCs are liable for any of the claims asserted in this action and all deny that any such claims can be tried on a class basis. They also all deny that, if HANO or the RMCs are liable for any claims asserted in this case, that any such claim would be subject to any policy of insurance issued by the Settling Insurers.

Notwithstanding the foregoing, the Settling Insurers have agreed to settle all claims made against them, and all claims that have been or could be made against HANO and the RMCS that are or could be subject to any policy of insurance issued by the Settling Insurers, for a combined totally payment of **\$3,760,000**. This payment will be made in exchange for releases from the following “Partial Settlement Class”:

All members of the class set forth in the Court’s June 30, 2014 order captioned “Reasons for Judgment” (the “Litigation Class”) and, to the extent not included in the Litigation Class, all other leaseholders and other permanent residents of (1) any facility owned, controlled, managed, or operated by THE HOUSING AUTHORITY OF NEW ORLEANS or (2) any facility controlled, managed, or operated by the Guste Homes Resident Management Corporation or B.W. Cooper Resident Management Corporation including, without limitation, all leaseholders and other permanent residents of the public housing facilities commonly known as the Guste Homes, B.W. Cooper Homes, and Calliope Projects, in all cases from January 1, 1998 to the date of preliminary approval of the Partial Settlement Class herein defined.

Subject to Court approval, this payment will be distributed to claimants in a manner to be determined by the Court in the future after the action has been fully resolved or at such other time as the Court may determine.

Additional important details of the nature of the Partial Settlement, and releases provided thereunder, may be found at the settlement website and in the STIPULATION OF CLASS ACTION PARTIAL SETTLEMENT AND RELEASE, WITH RESERVATION OF RIGHTS, which is available at that website.

**OPTING OUT, OBJECTING, OR SUBMITTING A
NOTICE OF INTENT TO MAKE A CLAIM**

The Court has appointed a “Claims and Notice Administrator” to receive and record (1) elections to opt out of this class action and Partial Settlement; (2) objections to the Partial Settlement; and

(3) Notices of Intention submitted for purposes of notifying the Court and parties or your intention to make a “Phase 2” claim or a claim against the Partial Settlement.

IF THIS NOTICE APPLIES TO YOU AND YOU WANT TO MAKE A CLAIM RELATED TO THE PARTIAL SETTLEMENT you must submit Notice of Intent to Make a Claim (“Notice of Intent”), in writing, to the Claims and Notice Administrator. Notice of Intent must be post-marked or received by the Claims and Notice Administrator by **June 26, 2020** (no later than midnight).

IF THIS NOTICE APPLIES TO YOU AND YOU DO NOT WANT TO BE INCLUDED IN THIS CLASS ACTION OR THE PARTIAL SETTLEMENT you must file a Request for Exclusion, in writing, signed by the member of the Litigation Class or Partial Settlement Class, or an authorized representative, identifying the case name, *Janice Claborne, et al., v. The Housing Authority of New Orleans, et al.* NO. 2001-20605 and stating: (1) the name, address, and e-mail address (if available) of the member of the Partial Settlement Class seeking exclusion; (2) the dates and addresses of residency (including street addresses and unit numbers) in HANO-owned, controlled, or managed housing facilities; and (3) a statement saying the member of the Partial Settlement Class requests “to be excluded from the Litigation Class and proposed Partial Settlement Class in the case of *Janice Claborne, et al., v. The Housing Authority of New Orleans, et al.*”

Requests for Exclusion must be post-marked or received by the Claims and Notice Administrator by **April 27, 2020** (no later than midnight).

Notice of Intent and Requests for Exclusion must be sent to the Claims and Notice Administrator:

DARLEEN M. JACOBS
JACOBS, SARRAT, LOVELACE,
HARRIS & MATTHEWS
823 St. Louis Street
New Orleans, LA 70112

Notice of Intent forms and Requests for Exclusion forms may be obtained from the Claims and Notice Administrator by writing to the address above or through the following web page:

housingauthorityofneworleansmoldlitigationclassaction.com

Any member of the Partial Settlement Class who intends to object to this Agreement must file with the Court a signed Notice of Intention to Object by **April 27, 2020** (the “Objection Bar Date”). The Notice of Intention to Object must be signed by the objector identifying the case name, *Janice Claborne, et al., v. The Housing Authority of New Orleans, et al.* NO. 2001-20605 and stating: (1) the name, address, and e-mail address (if available) of the member of the Partial Settlement Class seeking exclusion; (2) the dates and addresses of residency (including street addresses and unit numbers) in HANO-owned, controlled, or managed housing facilities; and (3) that the objector is a member of the proposed class; and (4) whether the objector intends to appear at the Fairness Hearing and whether the objector will do so with or without counsel.

A copy of such Notice of Intention to Object must also be sent to the Court and the Claims and Notice Administrator, and each must be post-marked by a date on or before the Objection Bar Date. Any member of the Partial Settlement Class who fails to timely file a signed written objection and Notice of Intention to Object pursuant to this Section, or as detailed in the Partial Settlement Class Notice, shall not be permitted to object to this Agreement at the Fairness Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means.

**IF YOU OPT-OUT OF THE CLASS ACTION, YOU WILL NOT BE INCLUDED IN
EITHER THE CLASS ACTION OR THE PARTIAL SETTLEMENT.**

If you opt-out of the class action and fail to take whatever action may be necessary to protect your interests within what may be a limited period of time from the date of your signature on the Opt-Out Form, you may be forever barred from bringing any action with regard to any claim for damages of any nature allegedly caused by the defendants.

A separate Opt-Out Form must be completed and personally signed by each adult who does not want to be included in the class action, and on behalf of minors (under the age of 18), incompetents (mentally or physically incapable), and the deceased. If you are completing a form on behalf of a minor, incompetent, or deceased, you must sign your name and provide your relationship to that individual and your address and telephone number. Each notice must include the complete name, social security number, date of birth and death, as well as street and mailing address of each person who is opting out of the class action.

The names of the persons nominated as class representatives and all other documentation related to these proceedings are available for your review at the offices of the Clerk of Court for Orleans Parish, Civil District Court, 421 Loyola Avenue, New Orleans, LA 70112. The Plaintiffs' complaints and other important documents are also available at **housingauthorityofneworleansmoldlitigationclassaction.com**.

Should you wish to submit a Notice of Intent, you may obtain the form for doing so either by writing to the Notice and Claims Administrator at the address above or at **housingauthorityofneworleansmoldlitigationclassaction.com**. You may also submit any supporting documentation related to your claim and provide your contact information (and update it in the future) so that you can receive future notices regarding this matter, including the resolution of Phase 1 and whether you will have the opportunity to submit a claim as part of Phase 2.

Finally, you are advised that the following attorneys were appointed to the Class Counsel Committee to manage and facilitate the orderly prosecution of this action:

DARLEEN M. JACOBS, LIAISON COUNSEL
ROBERT G. HARVEY, SR.
T. CAREY WICKER, III
THOMAS E. LOEHN
WILLIAM L. PRATT
NEIL D. SWEENEY
LEONARD L. LEVENSON
TERRILL W. BOYKIN

ADDITIONAL INFORMATION

Any questions you have concerning the matters contained in this notice and requests for Opt-Out forms should not be directed to the Court but should be directed in writing to any one of the following attorneys:

DARLEEN M. JACOBS
JACOBS, SARRAT, LOVELACE,
HARRIS & MATTHEWS
823 St. Louis Street
New Orleans, LA 70112
(504) 522-0155

WILLIAM L. PRATT
12777 Jones Road
Suite 297
Houston, TX 77070
(504) 232-3769

ROBERT G. HARVEY, SR.
ROBERT G. HARVEY, SR., APLC
600 N. Carrollton Avenue
New Orleans, LA 70119
(504) 822-2136

NEIL D. SWEENEY
7921 Picardy Avenue
Baton Rouge, LA 70809
(225) 768-7300

T. CAREY WICKER, III
CAPITELLI & WICKER
1100 Poydras Street, Ste. 2950
New Orleans, LA 70163
(504) 582-2425

LEONARD L. LEVENSON
650 Poydras Street, Suite 2750
New Orleans, LA 70130
(504) 586-0066

BOGGS, LOEHN & RODRIGUE
THOMAS E. LOEHN
3616 S. I-10 Service Rd., Ste. 109
Metairie, LA 70001
(504) 828-1202

TERRILL W. BOYKIN
BOYKIN & UTLEY
400 Poydras St, Suite 1540
New Orleans, LA 70130
(504) 527-5450

REMEMBER, all opt-out requests and objections must be post-marked or filed on or before **April 27, 2020**, and mailed by first class mail to the Clerk of Court, Civil District Court for the Parish of Orleans, 421 Loyola Avenue, New Orleans, LA 70112

NOTICE OF INTENT TO MAKE A CLAIM

Contact Information

Name: _____

Current Address: _____
Street Address Unit Number

City State Zip Code

Current Phone Number(s): Cell: _____ Home: _____

Work: _____

Email address: _____

HANO Residency

Describe when and where you lived within public housing facilities owned by the Housing Authority of New Orleans (“HANO”) from 1998 to ____ . For each apartment in which you lived, provide the name of the person leasing the unit from HANO.

<u>Unit</u>	<u>Dates of Occupancy</u>	<u>Address</u>	<u>Person Leasing Unit</u>
1			
2			
3			
4			

Please submit additional pages if you lived in more than 4 units.

Nature of your Claim(s)

For each unit listed above, identify the units in which you claim mold to have been present and the periods in which you maintain mold was present in the unit.

<u>Unit</u>	<u>Was Mold Present</u> Yes or No	<u>Dates on Which Mold Was Present</u>
1		
2		
3		
4		

For each unit listed above in which mold was present, describe where mold was in your unit as well as its general extent:

1.

2.

3.

4.

For each unit listed above in which mold was present, describe the cause of the mold presence in the unit, if known:

1.

2.

3.

4.

For each unit listed above, describe any documentary evidence you have of the existence of mold, including, for example, pictures or maintenance records.

1.

2.

3.

4.

You may attach copies of any records or evidence you have.

For each unit listed above in which mold was present, provide the names and contact information of any witnesses (other than yourself) who you believe may be able to testify as to the presence of mold:

1.

2.

3.

4.

For each unit listed above, describe the nature and extent of damages you claim to have experienced, including property damage you experienced:

1.

2.

3.

4.

As to the damages you claim to have experienced while living in each unit listed above, describe any documentary evidence you have substantiating those damages, including, for example, receipts for replaced property.

1.

2.

3.

4.

You may attach copies of any records or evidence you have.

For each unit listed above in which mold was present, provide the names and contact information of any witnesses (other than yourself) who you believe may be able to testify as to the existence of your damages:

1.

2.

3.

4.