

## ABR LAWSUIT SETTLEMENT

On 10/30/2024, board members Bob Leuenberger, Victor Alexander, and Pam Simpson, along with the HOA attorneys from Simmons Perrine Moyer Bergman LLC, Matt Roth and Jake Nelson, met in Dubuque, Iowa at the attorney offices representing Americas Best Remodeling for a mediation hearing, presided by a judge, to resolve the ABR vs Lexington East Unit One Owners Association lawsuit.

After over 8 hours of negotiations, our attorneys, with counsel from the mediating judge, recommended that the HOA settle the case with ABR, with payment being made to ABR from Lexington East Unit One.

**Attorneys Recommendation for Mediation and Settlement** in *America's Best Remodeling, LLC v. Lexington East Unit One Owners Association* is **based on the following:**

- The question is how a jury would decide this case which is deeply uncertain.
  - Several factors support the conclusion that a settlement is justified to protect the best interests of the homeowners association.
  - The minimum verdict favorable to ABR, being conservative, could exceed \$4,000,000 on this question.
  - ABR was able to venue the dispute in Dubuque County.
  - In the event ABR recovered a \$10,000,000 judgment including attorney fees, the loss assessment would exceed \$50,000 per unit owner.
- The favorable insurance settlement with American Family meant that Lexington would have sufficient money, after paying the deductible from the previous loss assessment, to pay ABR, Miller Public Adjuster, Darnell Construction, the HOA lawyers, and legal experts, and likely not require any further loss assessment.
- If a case does not settle in mediation, expenses will continue to accrue and it becomes harder to settle a case. The time to settle the case, if possible, would be at mediation.
- The mediator (Judge) indicated that Lexington faced great risk if this matter proceeded to trial and understands the arguments ABR raised could have been persuasive. While he understood our arguments and understood their arguments, he believed that there was ample risk and the mediator's conclusion was almost certainly correct.
- In summary, per legal counsel, a settlement is recommended for \$2,000,000 or less and is a reasonably good faith business decision by the Lexington East Unit One Board of Directors to be in the best interests of Lexington East owners, considering for the numerous risks.

### HOA decision on settlement agreement:

Based on our attorney's advice and the mediator's recommendations, and after consideration of the substantial continued legal cost and potential risk in proceeding to a trial, a settlement agreement in accordance with their suggestions for resolution of this lawsuit, was reached between Lexington East Unit One and ABR on 10/30/2024 which will be paid out from the insurance fund account located at Cedar Rapids Bank and Trust.

The remaining funds in the trust account will be sufficient to cover all remaining derecho repairs and legal fees with **no loss assessment cost to owners.**

If possible, the Board of Directors will schedule a Q&A meeting regarding the settlement sometime in December 2024, for owners to attend. The HOA attorney's will address owner questions. If this can be arranged, a notice of the meeting will be posted in each building and on the website.

The decision to agree to this mediation was difficult. Even more difficult was the acceptance of the resolution terms. However, it is in the best interest of all owners to close the page on this chapter and move on. Again, **the result is that all derecho repairs will be completed by a respected contractor with no loss assessment to owners for derecho repairs or legal fees.**

This challenging journey, which was caused by an act of nature and complicated by a devastating pandemic, began over 4 years ago on August 10, 2020. Those involved in the decision making to navigate the repair of our buildings and grounds have done their best to make responsible and difficult decisions on behalf of all owners.

The board of directors sincerely appreciates everyone's patience and support over the last 4 years and is looking forward to completion of all derecho repairs in Spring 2025.

Thank you.

**Board of Directors**