

IN RE:	§	IN THE DISTRICT COURT OF
	§	
HIDALGO HAIL	§	
	§	HIDALGO COUNTY, TEXAS
COMMERCIAL	§	
	§	
CLAIM LITIGATION	§	___ TH JUDICIAL DISTRICT COURT

**STANDING PRETRIAL ORDER CONCERNING
HIDALGO COUNTY COMMERCIAL HAIL CLAIMS**

It is hereby ORDERED that the 93rd, 206th and 370th District Courts of Hidalgo County, Texas, have been appointed as the Consolidated Pretrial Courts over Hidalgo Hail Litigation filed in District Court in Hidalgo County, Texas. The 93rd, 206th and 370th District Courts of Hidalgo County, Texas, have been assigned to handle all pretrial matters for commercial property insurance cases filed in the District Courts of Hidalgo County, Texas that involve insurance disputes arising out of hail storms that struck Hidalgo County on or about March 29, 2012 and April 20, 2012.

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

- A. This Order shall be affective and apply to all lawsuits filed in the District Courts of Hidalgo County, Texas wherein any policyholder (the "Plaintiff Insured") asserts a claim arising from damage to commercial property caused by the 2012 hail storms that struck Hidalgo County on or about March 29, 2012 and April 20, 2012, against an insurance carrier who issues insurance policies for commercial property (the "Commercial Insurance Carrier"); and
- B. Immediately upon the signing of this order, the District Clerk is hereby Ordered to post this Order on the district courts' web site.
- C. Any attorney for any Plaintiff Insured who is aware of this Order shall attach a copy of this Order to the Original Petition, or to otherwise send a copy of this Order to any party, if pro se, or to such party's counsel of record.
- D. Within one hundred (120) days after the Commercial Insurance Carrier makes an appearance in the lawsuit or the date of this Order, whichever is later, all parties are Ordered to agree on a mediator and mediation date. However, the mediation can be set to occur outside of this time period. Once the parties have agreed on a mediator and mediation date, they shall notify the Court by filing the Mediation Order (Exhibit "A") to the Standing Pretrial Order. If the parties make an agreement around the timing in this provision, the parties must obtain approval of their agreement from the Court.
- E. Immediately upon the filing of the Commercial Insurance Carrier's Original Answer, the case will be abated until (1) 30 days after an impasse letter from a mediator or (2) notice by any party that the party desires to unilaterally end the abatement period applicable to a

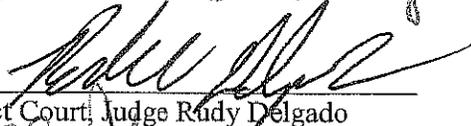
particular case 30 days from the date the notice is received by the opposing party. The abatement period will apply to all Court ordered deadlines or Rule 190 Discovery deadlines. The abatement period will not apply to any statutory deadline, interest or penalties that may apply under any statutory code or law. The parties may send written discovery during the abatement period, however, the responses and objections to those discovery requests will not be due until 30 days after the earlier of an impasse letter from a mediator or a party's termination of the abatement period. If a party elects to participate in mediation or any other provision of this Order or elects to opt out of the abatement, such actions alone will not affect any parties' statutory or contractual rights.

- F. Furthermore, within 120 days of the filing of the Commercial Insurance Carrier's Original Answer or the date of this Order, whichever is later, the parties will use their best efforts to exchange information and documentation pertaining to the commercial property, to the extent same exists, including the following: Expert Reports, Engineering Reports, Estimates of Damage or repairs; Contents Lists for contents damage claim; Photographs; Repair Receipts or Invoices; the non-privileged portions of the Commercial Insurance Carrier and Adjusting Company's claim file (including all claim diary notes, activity logs, loss notes and email correspondence regarding the insurance claims); payment ledger, payment log and/or proof of payment from the Commercial Insurance Carrier; a copy of the insurance policy in effect at the time of the hail claim(s); and the non-privileged portions of the underwriting file. If the Commercial Insurance Carrier is not in possession of the Adjusting Company's/Adjuster's claims file, and the Adjusting Company/Adjuster is not a named as a party in the lawsuit represented by separate counsel, then the Commercial Insurance Carrier shall seek the Adjusting Company's claims file and use their best efforts to exchange this information within the 120 day time period. The Commercial Insurance Carrier is also Ordered to notify the independent adjusting company that all emails, activity notes and loss diary notes pertaining to the Hail claim in litigation shall be preserved and not destroyed pursuant to this Order. Lastly, a privilege log will also be produced in accordance with the Texas Rules of Civil Procedure for any redactions or privileges being asserted on any documents in the claims file or claim correspondence. Within, 180 days of filing of the Insurance Carrier's original Answer or the date of this Order, whichever is later, the parties will use their best efforts to exchange information and documentation pertaining to any business interruption claim and/or loss of business income claim, to the extent same exists, including the following; Lost Profits information, Inventory Loss List with values, food loss, Lost Business Expense information and documentation, Accounts Receivable information (if any), Business expense information, accounting and financial information and documentation applicable to determining Lost Profits, Business Loss, or Loss of Business Income.
- G. Any Expert Reports, Engineering Reports, Contractor Estimates or any other estimates of damages or repairs obtained by directive of Counsel for settlement, demand, or mediation purposes and exchanged prior to mediation shall be for "Mediation Purposes Only" and shall be considered confidential, except that any estimates and/or reports that are part of the claims file, which were obtained or prepared during the claims handling, shall not be considered confidential under this paragraph. Otherwise, such reports and estimates exchanged for mediation purposes shall only be used at trial if Plaintiff or Defendant

designates the consultant as a retained testifying expert and does not properly de-designate prior to trial. If a consultant, whose report is produced at mediation, produces a subsequent report for use at trial, the mediation report shall remain confidential unless agreed to otherwise. The reports and estimates are only confidential for the lawsuit in which they are being used. Expert reports designated for mediation purposes shall be returned to the providing party within 14 days of a written request by the providing party for their return after mediation. Such reports shall not be discoverable or admissible at trial or any hearing. If the party procuring the report designates the expert regarding the mediation report and any opinions therein. The procuring party may use data such as measurements and photographs without waiving this privilege. Nothing herein shall prohibit the use of those reports and estimates in any subsequent insurance claims or lawsuits involving the same Commercial Insurance Carrier.

- H. Once a mediation date and mediator are agreed to by all parties, the Commercial Insurance Carrier and other Defendants shall be permitted to inspect the property involved in the lawsuit (as soon as practicable) prior to mediation. If mediation is unsuccessful, the Commercial Insurance Carrier and other Defendants may have a re-inspection of the property with the same, new or additional experts pursuant to the Texas Rules of Civil Procedure.
- I. The Mediator shall notify the Court within 48 hours once an impasse has been declared by the Mediator. This notice shall be in writing and sent to all parties and the Court.
- J. Upon the expiration of the abatement period applicable to the case, within 30 days the parties will enter into an Agreed Scheduling Order, which will include a date for trial.
- K. The Court shall set a Status Conference to occur on each case under this Order 220 days from the date the Original Petition was filed or the date of this Order, whichever is later, and provide written notice to all parties of the date and time of the Status Conference.

Signed this 28th day of February, 2013.



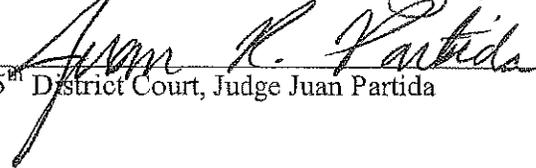
93rd District Court, Judge Rudy Delgado



139th District Court, Judge Roberto Flores

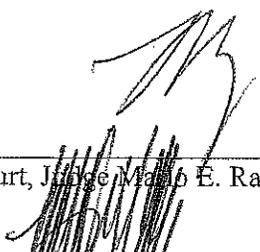


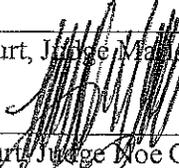
206th District Court, Judge Rosa Guerra Reyna

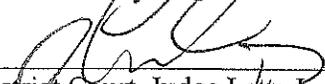


275th District Court, Judge Juan Partida

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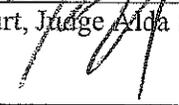

332nd District Court, Judge Mario E. Ramirez, Jr.


370th District Court, Judge Noe Gonzalez


389th District Court, Judge Letty Lopez


430th District Court, Judge Ismael Ramon, Jr.


398th District Court, Judge Alda Salinas Flores


92nd District Court, Judge Ricardo Rodriguez, Jr.

MEDIATION ORDER

This case is hereby **ORDERED** to mediation by no later than ____ day of _____, 20____. The parties have suggested the Court appoint the following mediator, and pursuant to such agreement, the Court hereby appoints _____.

An attorney of record is **ORDERED** to attend for each party. All individual parties, either Plaintiff or Defendant, are **ORDERED** to attend; except that Individual Defendant Adjusters and Insurer Employee Defendants are not ordered to attend, but a representative with full authority to negotiate and settle their case on their behalf is **ORDERED** to attend. A representative of each non-individual party is **ORDERED** to attend unless the parties agree otherwise. Each party or party representative so attending must be vested with the authority to enter into a final settlement agreement. If there is insurance, a person who has full authority to decide whether insurance payments will be made must attend.

The parties are further **ORDERED** to BE PREPARED IN ADVANCE for the mediation. The parties must comply with the document production requirements as set forth in the Standing Case Management Order and in the manner prescribed by the Standing Case Management Order. Counsel shall negotiate openly and knowledgeable; failure to negotiate in good faith, may be treated as contempt. All individuals ordered to attend must remain in attendance until the mediator declares the mediation concluded, subject only to recess as declared by the mediator. Failure to appear or to remain without timely seeking relief may be sanctioned as contempt. All settlement discussions shall be subject to Texas Rule of Evidence 408 and Tex. Civ. Prac. & Rem. Code 154.073.

Signed this __ day of _____, 20____.

Judge Presiding

Exhibit "A"