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Hidalgo County District Clerks
Reviewed By: Matthew Padron

MDL NOS. 13-0123, 13-0130 and 13-0418

IN RE MARCH 29, 2012 AND APRIL 20, 2012 HAIL STORM LITIGATION	§	IN THE DISTRICT COURT
	§	
	§	
	§	HIDALGO COUNTY, TEXAS
	§	
	§	
	§	206TH JUDICIAL DISTRICT

RECOMMENDATION NO. 8 OF SPECIAL DISCOVERY MASTER FOR ENTRY OF CASE MANAGEMENT ORDER NO. 3 RELATING TO UTILIZATION OF DEFINITIONS IN PLAINTIFFS' MASTER DISCOVERY SET and PRODUCTION PROTOCOL FOR ELECTRONICALLY STORED INFORMATION (ESI)

Pursuant to my appointment as Special Discovery Master in the above-referenced MDL proceedings, I hereby recommend that the Court adopt and enter Case Management Order No. 3 Relating to Utilization of Definitions in Plaintiffs' Master Discovery Set and Production Protocol for Electronically Stored Information (ESI), attached hereto, to be utilized in these proceedings.

IT IS SO RECOMMENDED.

SIGNED this the 10th day of February, 2014.

ROBERTO L. RAMIREZ
Special Master

EXHIBIT "A"

DEFINITIONS APPLICABLE TO PLAINTIFFS' MASTER DISCOVERY TO DEFENDANTS

The following definitions shall have the following meanings, unless the context of the discovery request requires otherwise:

1. "Document" means any textual, visual and auditory information items in all forms in which they are stored and/or communicated.

2. "Person" means an individual, corporation, association, partnership, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, agent, broker, adjuster, contractor/estimator, engineer, independent contractor, or employee.

3. "Handle", handled", "handling", and/or "worked on" - any person, as defined above, that made a decision, investigated, adjusted, consulted, supervised, managed, settled, approved, provided information or otherwise performed a task relating to the claims made the basis of this lawsuit, excluding persons performing purely ministerial or clerical tasks.

4. "Policy" refers to the policy of insurance in effect on the date that the loss made the basis of this lawsuit occurred.

5. "Property" refers to the residence, dwelling, other structures, and personal property covered by the Policy, as defined above, made the basis of this lawsuit.

6. "Hidalgo County Hailstorm" and/or "March 29, 2012 and/or April 20, 2012 hail and windstorms" refer to the hail and/or windstorms that occurred during the month of March and April of 2012 in Hidalgo County and surrounding areas.

7. "Describe", when referring to a document, is defined to require that you state the following:

    a. The nature (e.g., letter, handwritten note) of the document;
    b. The title or heading that appears on the document;
    c. The date of the document and the date of each addendum supplement, or other addition or change;
    d. The identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered;
    e. The present location of the document, and the name, address, position, or title, and telephone number of the person or person having custody of the document.

EXHIBIT "B"

PRODUCTION PROTOCOL RELATING TO ELECTRONICALLY STORED INFORMATION (ESI) ATTENDANT TO PLAINTIFFS' MASTER DISCOVERY TO DEFENDANTS

1. "Information items" as used here encompass individual documents and records (including associated metadata) whether on paper or film, as discrete "files" stored electronically, optically or magnetically or as a record within a database, archive or container file. The term should be read broadly to include e-mail, messaging, word processed documents, digital presentations and spreadsheets.

2. Consistent with Tex. R. Civ. P. 196.4, responsive electronically stored information (ESI) has been requested by the Plaintiff(s) in its native form; that is, in the form in which the information was customarily created, used and stored by the native application employed by the producing party in the ordinary course of business. The producing party shall not produce in a format not requested and later assert that production as a basis of not producing in the requested format, except upon agreement by the parties prior to production or ordered by the Court. The parties are reminded of their obligation to confer and to make reasonable efforts to resolve disputes regarding production without court intervention. See In re Weekley Homes, L.P., 295 S.W. 3d 309 (Tex. 2009); Tex. R. Civ. P. 192.4(b).

3. If it is infeasible or unduly burdensome to produce an item of responsive ESI in its native form, it may be produced in an agreed-upon near-native form; that is, in a form in which the item can be imported into the native application without a material loss of content, structure or functionality as compared to the native form. Static image production formats serve as near-native alternatives only for information items that are natively static images (*i.e.*, photographs and scans). Any and all agreements between the parties on a non-native form of production shall occur prior to initial production and the agreements shall be in writing. If no agreement can be made between the parties, consistent with Tex. R. Civ. P. 196.4, Defendant will object and file with the Court evidence that production in native or near-native form is unduly burdensome or requires extraordinary steps. In the event the Court determines that production in native or near-native format is infeasible, production shall be made in accordance with Instruction No. 6 of this Protocol.

4. The table below supplies examples of agreed-upon native or near-native forms in which specific types of ESI should be produced:

Source ESI	Native or Near Native Form or Forms Sought
Microsoft Word documents	.DOC, .DOCX
Microsoft Excel Spreadsheets	.XLS, .XLSX
Microsoft PowerPoint Presentations	.PPT, .PPTX
Microsoft Access Databases	.MDB, .ACCDB
WordPerfect documents	.WPD
Adobe Acrobat Documents	.PDF
Photographs	.JPG, .PDF

Xactimate Documents	.ESX
E-mail	Messages should be produced in a form or forms that readily support import into standard e-mail client programs; that is, the form of production should adhere to the conventions set out in RFC 5322 (the internet e-mail standard). For Microsoft Exchange or Outlook messaging, .PST format will suffice. Single message production formats like .MSG or .EML may be furnished, if source foldering data is preserved and produced. For Lotus Notes mail, furnish .NSF files or convert to .PST. If your workflow requires that attachments be extracted and produced separately from transmitting messages, attachments should be produced in their native forms with parent/child relationships to the message and container(s) preserved and produced in a delimited text file.

5. Absent a showing of need, a party shall only produce reports from databases that can be generated in the ordinary course of business (i.e., without specialized programming skills), and these shall be produced in a delimited electronic format preserving field and record structures and names. The parties will meet and confer prior to initial production regarding programmatic database productions as necessary.

6. Information items that are paper documents or that require redaction shall be produced in static image formats, e.g., single-page .TIF or multipage PDF images. If an information item contains color, the producing party shall not produce the item in a form that does not display color. The full content of each document will be extracted by optical character recognition (OCR) or other suitable method to a searchable text file produced with the corresponding page image(s) or embedded within the image file.

7. Parties shall take reasonable steps to ensure that text extraction methods produce usable, accurate and complete searchable text.

8. Individual information items requiring redaction shall (as feasible) be redacted natively or produced in .PDF format and redacted using the Adobe Acrobat redaction feature. Redactions shall not be accomplished in a manner that serves to downgrade the ability to electronically search the unredacted portions of the item. To the extent a producing party asserts that production in .PDF format and redaction using the Adobe Acrobat redaction feature is unfeasible, the parties are directed to confer in an attempt to resolve any dispute without Court intervention. If the dispute cannot be resolved between the parties, the manner of production can be brought before the Court consistent with Tex. R. Civ. P. 196.4.

9. Upon a showing of need, a producing party shall make a reasonable effort to locate and produce the native counterpart(s) of any .PDF or .TIF document produced. The parties

agree to meet and confer prior to initial production regarding production of any such documents. This provision shall not serve to require a producing party to reveal redacted content.

10. Except as set out in this Protocol, a party need not produce identical information items in more than one form and shall globally de-duplicate identical items across custodians using each document's unique MD5 hash value. The content, metadata and utility of an information item shall all be considered in determining whether information items are identical, and items reflecting different information shall not be deemed identical.

11. Production should be made using appropriate electronic media of the producing party's choosing provided that the production media chosen not impose an undue burden or expense upon a recipient. All productions should be encrypted for transmission to the receiving party. The producing party shall, contemporaneously with production, supply decryption credentials and passwords to the receiving party for all items produced in an encrypted or password-protected form.

12. Each information item produced shall be identified by naming the item to correspond to a Bates identifier according to the following protocol:

    i. The first four (4) characters of the filename will reflect a unique alphanumeric designation identifying the party making production;

    ii. The next nine (9) characters will be a unique, consecutive numeric value assigned to the item by the producing party. This value shall be padded with leading zeroes as needed to preserve its length;

    iii. The final five (5) characters are reserved to a sequence beginning with an underscore (_) followed by a four digit number reflecting pagination of the item when printed to paper or converted to an image format for use in proceedings or when attached as exhibits to pleadings.

    iv. By way of example, a Microsoft Word document produced by Republic Lloyds in its native format might be named: REPL000000123.docx. Were the document printed out for use in deposition, page six of the printed item must be embossed with the unique identifier REPL000000123_0006.

13. Information items designated Confidential may, at the Producing Party's option:

    a. Be separately produced on electronic production media prominently labeled to comply with the requirements of paragraph 2 of the September 10, 2013 Protective Order entered in this matter; or, alternatively,

    b. Each such designated information item shall have appended to the file's name (immediately following its Bates identifier) the following protective legend: ~CONFIDENTIAL-SUBJ_TO_PROTECTIVE_ORDER_IN_CAUSE_MDL-13-0123

When any item so designated is converted to a printed format for any reason or imaged format for use in any submission or proceeding, the printout or page image shall bear the protective legend on each page in a clear and conspicuous manner, but not so as to obscure content.

14. Producing party shall furnish a delimited load file supplying the metadata field values listed below for each information item produced (to the extent the values exist and as applicable):

Field
BeginBates
EndBates
BeginAttach
EndAttach
Custodian/Source
Source File Name
Source File Path
From/Author
To
CC
BCC
Date Sent
Time Sent
Subject/Title
Last Modified Date
Last Modified Time
Document Type
Redacted Flag (yes/no)
Hidden Content/Embedded Objects Flag (yes/no)
Confidential flag (yes/no)
MD5 Hash value
Hash De-Duplicated Instances (by full path)

15. Each production should include a cross-reference load file that correlates the various files, images, metadata field values and searchable text produced.

16. Parties shall respond to each request for production by listing the Bates numbers/ranges of responsive documents produced, and where an information item responsive to these discovery requests has been withheld or redacted on a claim that it is privileged, the producing party shall furnish a privilege log in accordance with Texas Rule of Civil Procedure 193.3.