CAUSE NO. MDL NO. 13-0123; 13-0130; 13-0148

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

**CASE MANAGEMENT ORDER NO. 4**

This Court has been appointed as MDL Court for MDL Cause Nos. 13-0123; 13-0130; and 13-0418. After consideration of pretrial and trial-related issues and discussion with counsel representing plaintiffs, counsel representing various defendants and the various judges of the Hidalgo County District Courts, the MDL Court hereby enters the following order.

## I.
## COURT ASSIGNMENTS/DOCKET CONTROL ORDERS

1. Cases in currently pending in MDL 13-0123; 13-0130; and 13-418 and any future tag-along cases under Rule 13 of the Texas Rules of Judicial Administration shall be assigned to the Hidalgo County Judicial District Courts for trial as follows:

2. Trials shall occur within each district court on a rotating basis beginning November 3, 2014, pursuant to the schedule attached as Exhibit A.

3. For cases in which the Mediator's Statement is filed *after* the date that this Order is entered, the parties must enter into an Agreed Docket Control Order (DCO) within thirty (30) days of the Mediator's Statement that comports with the following deadlines (See MDL Court Approved Docket Control Order, attached hereto as Exhibit B):

> **Appraisal Deadline:** Any party wishing to invoke the appraisal process must file a Declaration of Appraisal within 30 days from the date the Mediator's Statement

is filed with the Court. The parties must then comply with the deadlines as set forth in Section V below.

**Joinder Deadline:** Sixty (60) days from the date the Mediator's Statement is filed.

**Plaintiff(s), Defendant(s), Adjuster(s) and Corporate Representative(s) Depositions Deadline:** One hundred and fifty (150) days from the date the Mediator's Statement is filed. Plaintiff's depositions will occur prior to Defendant fact witness depositions however all deposition dates shall be agreed to at the same time.

4. For cases in which a Mediator's Statement was filed *prior to* the date that this Order is entered, the parties are ordered to enter into a modified DCO within twenty (20) days from the date of this Order that contemplates completion of the deadlines listed above on or before August 1, 2014.

5. If the parties cannot agree on a DCO before the deadlines set forth above, the parties must promptly set a status conference with the MDL Court/Special Master and the MDL Court/Special Master will enter a DCO. Any Special Master fees incurred for said DCO shall be deemed case specific fees and billed to the parties to the specific case only.

## II.
## TRIAL ELIGIBLE CASES

6. Within one hundred and fifty (150) days from the date a Mediator's Statement is filed, the parties should have completed the items listed below:

Trial Eligible Case Criteria:

a) Mediation;

b) Party and Fact Witness Depositions; and

c) Corporate Representative Depositions.

7. Upon completion of the criteria listed above, the case shall be considered by the MDL Court and the parties as "Trial Eligible." Once a case is Trial Eligible, the case may be designated for trial at the appropriate time and assigned a trial setting as explained more fully below.

8. If the case is not eligible for trial certification at that time, the parties must appear at a hearing and provide an explanation to the MDL Court along with proposed a plan for completing the trial certification criterion within thirty (30) days.

## III.
## DESIGNATION OF TRIAL CASES

9. The MDL Court will assign each carrier a trial week(s). One hundred and twenty (120) days before each available trial setting listed on Exhibit A, the parties shall give written notice to the MDL Court of the ten (10) cases designated for trial. Plaintiffs, through Plaintiffs' Steering Committee, shall designate five (5) Trial Eligible cases per insurer, per trial week and each defendant insurance carrier shall designate five (5) Trial Eligible cases per insurer, per trial week. Once designated as a "trial case," it is the MDL Court's discretion which of the ten (10) cases designated is released to the trial court for trial. The number of cases to be tried at one time shall be determined at the discretion of the trial judge. The ten cases shall be randomly assigned a trial order by the MDL Court.

10. For all 2014 trial settings listed in Exhibit A, the deadline to designate trial cases shall be ninety (90) days in advance of trial instead of one hundred and twenty (120) days in order to give the parties additional time to complete the Trial Eligible Case Criteria as set forth in Section II of this Order.

11. Within fourteen (14) days from the date a case is designated for trial, the parties must enter into an Agreed Docket Control Order (DCO) that comports with the deadlines set forth in

Section IV. below (See MDL Court Approved Pretrial Docket Control Order, attached hereto as Exhibit C).

## IV.
## DEADLINES GOVERNING DESIGNATED TRIAL CASES

12. Once designated by a party as a trial case, the parties must comply with the deadlines outlined below for the ten (10) designated cases prior to the assigned trial setting.

**Plaintiff's Expert Designation Deadline:** Ninety (90) days prior to trial, Plaintiffs must designate experts and shall produce Expert Contractor Reports or Estimates, Engineering Reports, and any other Expert Report(s) that Plaintiff(s) intends to rely upon at the time of trial, with the exception of Bad Faith and Attorney's Fees Expert reports.

**Defendant's Expert Designation Deadline:** Sixty (60) days prior to trial, Defendants must designate experts and shall produce Expert Contractor Reports or Estimates, Engineering Reports, and any other Expert Report(s) that Defendant(s) intends to rely upon at the time of trial, with the exception of Bad Faith and Attorney's Fees Expert reports.

*For all 2014 trial settings, Plaintiff(s)' deadline to produce expert reports is seventy-days (75) days prior to trial, and Defendant(s)' deadline to produce expert reports is forty-five (45) days prior to trial in order to give the Experts additional time to complete reports.

**Expert Witness Depositions:** Thirty (30) days prior to trial all expert depositions shall be complete, with the exception of Attorney's Fees and Bad Faith Expert depositions, unless otherwise agreed to in writing by the parties. No defense expert may be deposed until five days after Plaintiff's corresponding expert, unless plaintiff has not designated an expert in that particular topic/field.

**Dispositive Motions & Expert Challenges:** Dispositive Motions and Expert Challenges must be heard no later than ten (10) days prior to trial, with proper notice of any hearings as required by the Texas Rules of Civil Procedure

**Status Conference:** Thirty (30) days prior to trial the parties for all ten (10) trial designated cases shall attend a status conference with the MDL Court. At that time, the MDL Court shall select the order in which the ten (10) designated trial cases will be released to the trial court for trial.

**Bad Faith Expert and Attorney's Fees Expert Depositions:** Bad Faith and Attorney's Fees depositions shall occur prior to the Pre-Trial Hearing. The parties shall produce reports for these experts at least seventy-two (72) hours in advance of their depositions, unless otherwise agreed to by the parties. Attorney's fees will

continue to accrue through trial and nothing herein shall limit the parties from supplementing attorney's fees documentation or attorney's fees reports through trial.

**Pleadings Deadline:** All pleadings must be amended or supplemented no later than seven (7) days before trial.

## V.
## APPRAISAL

13. For those cases in which a Declaration of Appraisal is filed with the Court, the appraisal process shall commence in the following manner:

14. Within seven (7) days from the date the Declaration of Appraisal is filed with the Court, the parties shall identify their respective appraisers. If either party has previously identified their appraiser and provided notice to the opposing party, it is not necessary for that party to send further notice to the opposing party about their appraiser unless the originally identified appraiser will be replaced by another appraiser.

15. Within seven (7) days from the date the appraisers are identified, the appraisers must reasonably and in good faith attempt to agree upon an umpire. In the event the appraisers cannot agree upon an umpire after the expiration of seven (7) days, then the parties shall promptly file a Motion to Appoint an Umpire with the Court, and the MDL Court shall appoint the umpire.

16. Appraisers must conduct a joint inspection of the Property and exchange written reports within 30 days from the date the Declaration of Appraisal is filed with the Court.

17. If the appraisers do not agree on the amount of the loss, the appraisers must submit their differences to the designated umpire within 45 days from the date the Declaration of Appraisal is filed with the Court.

18. The umpire shall render a decision no later than thirty (30) days from the date the appraisers submit their differences to the umpire.

19. The entire appraisal process shall not exceed 75 days. Discovery shall not be abated during the

appraisal process.

## VI.
## WRITTEN DISCOVERY

20. Unless otherwise set forth herein, responses to Master Discovery are due no later than thirty (30) days after the date the responding party is served with a letter requesting the applicable discovery be answered, in accordance with First Amended MDL Case Management Order No. 2, and will be conducted in the following manner:

21. The Defendant Insurer shall provide Responses and Objections to Institutional Interrogatories and Institutional Requests for Production only one time.

22. The parties may issue subpoenas and depositions on written questions to third parties in accordance with the TEXAS RULES OF CIVIL PROCEDURE and subject to rulings of the MDL Court.

## VII.
## PARTY AND FACT WITNESS DEPOSITIONS

23. Depositions will be conducted pursuant to the TEXAS RULES OF CIVIL PROCEDURE, unless otherwise set forth herein or agreed to by the parties.

24. Party and Fact Witness depositions shall commence no earlier than 14 days after the receipt of the opposing parties' answers to the Hidalgo County MDL Master Discovery unless otherwise agreed to by the parties.

25. Should it be necessary based on the number of cases pending at any one time between Defendant Insurer and any one plaintiff law firm, counsel for the parties are ordered to meet and confer to develop a reasonable schedule for depositions in accordance with this CMO.

## VIII.
## CORPORATE REPRESENTATIVE DEPOSITIONS

26. Corporate Representative depositions regarding institutional knowledge will be taken only once for no more than fifteen (15) hours, absent a showing of good cause and order from the MDL Court. These depositions will include Corporate Representatives of the Defendant Insurer, and the Corporate Representatives of any of the independent adjusting firms retained by the Defendant Insurer for handling claims arising out of the March 29, 2012 or April 20, 2012 hail storms that occurred in Hidalgo County, Texas.

27. Plaintiff's Steering Committee must provide counsel for Defendants at least twenty-one (21) days notice of the requested deposition. Corporate representative topics shall be reasonable in number and scope, and additional topics will be permitted only on a showing that the topic could not have been anticipated. Plaintiff's Steering Committee shall provide the list of corporate representative topics no later than twenty-one (21) days before the deposition date, and counsel for Defendants will designate the person(s) for those issues no later than ten (10) days before the deposition.

28. All corporate representative depositions shall be taken by counsel designated by the Plaintiff Steering Committee. No more than four lawyers per side may question an individual deponent, and questioning shall not be duplicative. One hour shall be reserved at the end of the deposition of an individual deponent for any lawyer representing a Plaintiff to ask non-duplicative questions. Any attorney wishing to ask questions must have attended the entirety of the deposition. Any lawyer who attended the entirety of the deposition and was not afforded the opportunity to ask non-duplicative questions may file a motion with the MDL Court, submit the questions or areas of inquiry that would have been pursued, seek additional time.

29. The plaintiffs in this MDL shall not, without good cause, re-notice the deposition of a witness on a previously covered topic if that witness was identified and deposed under the terms of this Order. In the event that Plaintiff re-notices the deposition of an identified witness on a previously covered topic, the Plaintiff must obtain permission of the MDL Court, showing good cause for the necessity of an additional deposition.

30. If a person was designated by Defendant as a Corporate Representative on institutional issues and that person also has case-specific knowledge, that person may be deposed again during Party and Fact Witness Depositions discussed in Section VII on his/her case-specific knowledge for no more than four (4) hours.

## IX.
## TRIAL INSPECTIONS

31. Upon written request from the defendant, the plaintiff shall make the insured premises available for trial inspection (in those cases where a trial inspection has not previously occurred) on a mutually agreeable time and date, but not later than fourteen (14) days from the date of the written request.

## X.
## MISCELLANEOUS PROVISIONS

32. Nothing in this CMO shall preclude any party from making an application to the MDL Court for relief from this Order. The parties are permitted and encouraged to make agreements, through Texas Rule of Civil Procedure 11 or otherwise, in order to avoid the necessity of court intervention.

SIGNED and ENTERED this the 22nd day of May ~~2014.~~

Hon. Judge Rose Guerra Reyna

Hon. Judge Bobby Flores
Local Administrative Judge

**AGREED AS TO FORM:**

**THE MOSTYN LAW FIRM**

*/s/ Amber Anderson Mostyn*
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jkearns@thompsoncoe.com

**HAILSTORM TRIAL WEEKS 2014-2015**

| | | | |
|---|---|---|---|
| **3-Nov-14** | 206th District Court | 430th District Court | |
| **10-Nov-14** | | | |
| **17-Nov-14** | 92nd District Court | 93rd District Court | |
| **24-Nov-14** | | | NO PANELS |
| **1-Dec-14** | 139th District Court | 275th District Court | |
| **8-Dec-14** | | | |
| **15-Dec-14** | 332nd District Court | 370th District Court | |
| **22-Dec-14** | NO PANELS | | NO PANELS |
| **29-Dec-14** | NO PANELS | | NO PANELS |
| **5-Jan-15** | 389th District Court | 398th District Court | |
| **12-Jan-15** | | | |
| **20-Jan-15** | 206th District Court | 430th District Court | |
| **26-Jan-15** | | | |
| **2-Feb-15** | 92nd District Court | 93rd District Court | |
| **9-Feb-15** | | | |
| **17-Feb-15** | 139th District Court | 275th District Court | |
| **23-Feb-15** | | | |
| **2-Mar-15** | 332nd District Court | 370th District Court | |
| **9-Mar-15** | | | |
| **16-Mar-15** | 389th District Court | 398th District Court | |
| **23-Mar-15** | | | |
| **30-Mar-15** | 206th District Court | 430th District Court | |
| **6-Apr-15** | | | |
| **13-Apr-15** | 92nd District Court | 93rd District Court | |
| **21-Apr-15** | | | |
| **27-Apr-15** | 139th District Court | 275th District Court | |
| **4-May-15** | | | |
| **11-May-15** | 332nd District Court | 370th District Court | |
| **18-May-15** | | | |
| **26-May-15** | 389th District Court | 398th District Court | |
| **1-Jun-15** | | | |
| **8-Jun-15** | 206th District Court | 430th District Court | |
| **15-Jun-15** | | | |
| **22-Jun-15** | 92nd District Court | 93rd District Court | |
| **29-Jun-15** | | | |
| **6-Jul-15** | 139th District Court | 275th District Court | |
| **13-Jul-15** | | | |
| **20-Jul-15** | 332nd District Court | 370th District Court | |
| **27-Jul-15** | | | |
| **3-Aug-15** | 389th District Court | 398th District Court | |
| **10-Aug-15** | | | |
| **17-Aug-15** | 206th District Court | 430th District Court | |
| **24-Aug-15** | | | |
| **31-Aug-15** | 92nd District Court | 93rd District Court | |
| **8-Sep-15** | NO PANELS | | NO PANELS |
| **14-Sep-15** | 139th District Court | 275th District Court | |
| **21-Sep-15** | | | |

EXHIBIT

A

**HAILSTORM TRIAL WEEKS 2014-2015**

| | | | |
|---|---|---|---|
| **28-Sep-15** | 332nd District Court | 370th District Court | |
| **5-Oct-15** | | | |
| **12-Oct-15** | 389th District Court | 398th District Court | |
| **19-Oct-15** | | | |
| **2-Nov-15** | 206th District Court | 430th District Court | |
| **9-Nov-15** | | | |
| **16-Nov-15** | 92nd District Court | 93rd District Court | |
| **23-Nov-15** | NO PANELS | | NO PANELS |
| **30-Nov-15** | 139th District Court | 275th District Court | |
| **7-Dec-15** | | | |
| **14-Dec-15** | 332nd District Court | 370th District Court | |
| **21-Dec-05** | NO PANELS | | NO PANELS |
| **28-Dec-15** | NO PANELS | | NO PANELS |
| | | | |
| **2016 to be determined later** | | | |

CAUSE NO. MDL NO. 13-0123; 13-0130; 13-0148

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|---|---|---|
| | § | IN THE DISTRICT COURT OF |
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| HAIL STORM LITIGATION | § | |
| | § | |
| | § | 206TH JUDICIAL DISTRICT |

**MDL COURT APPROVED DOCKET CONTROL ORDER**

The following Agreed Scheduling Order shall apply to this case unless modified by the Court.

1. _____ **DATE MEDIATOR'S STATEMENT IS FILED.**

2. _____ **APPRAISAL DEADLINE.**
Any party wishing to invoke the appraisal process must file a Declaration of Appraisal within 30 days from the date the Mediator's Statement is filed with the Court. The parties must then comply with the deadlines as set forth in CMO No. 4 Section IV.

3. _____ **JOINDER.**
Sixty (60) days from the date the Mediator's Statement is filed.

4. _____ **PLAINTIFF(S), DEFENDANT(S), ADJUSTER(S) and CORPORATE REPRESENTATIVE(S) DEPOSITIONS DEADLINE.**
One hundred and fifty (150) days from the date the Mediator's Statement is filed. Plaintiff's depositions will occur prior to Defendant fact witness depositions however all deposition dates shall be agreed to at the same time.

5. _____ **TRIAL ELIGIBLE CASES.** Within one hundred and fifty (150) days from the date a Mediator's Statement is filed, the parties must complete the trial certification criterion listed in CMO No.4. If the case is not eligible for trial certification within 150 days from the date Mediator's Statement is filed, the parties must appear at a hearing and provide an explanation to the Court along with proposed a plan for completing the trial certification criterion within thirty (30) days.

**ONCE A CASE IS TRIAL ELIGIBLE, THE CASE MAY BE DESIGNATED FOR TRIAL AND ASSIGNED A TRIAL SETTING. FOLLOWING DESIGNATION, THE PARTIES SHALL SUBMIT A NEW DCO THAT COMPORTS WITH THE DEADLINES SET FORTH IN CASE MANAGEMENT ORDER NO. 4, EXHIBIT C.**



EXHIBIT
B

Signed this ____ day of _____, 2014.

_____
JUDGE

**AGREED AS TO FORM AND SUBSTANCE:**

_____

**ATTORNEY FOR PLAINTIFFS**

_____

**ATTORNEY(S) FOR DEFENDANTS**

CAUSE NO. MDL NO. 13-0123; 13-0130; 13-0148

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

**MDL COURT APPROVED PRE-TRIAL DOCKET CONTROL ORDER**

The following Agreed Scheduling Order shall apply to this case unless modified by the Court.

1. _____ **DESIGNATION OF TRIAL CASES.**
One hundred and twenty (120) days before each available trial setting, the parties shall give written notice to the MDL Court of the ten (10) cases designated for trial.

2. _____ **PLAINTIFF'S EXPERT DESIGNATION DEADLINE.** Ninety (90) days prior to trial, Plaintiffs must designate experts and shall produce Expert Contractor Reports or Estimates, Engineering Reports, and any other Expert Report(s) that Plaintiff(s) intends to rely upon at the time of trial, with the exception of Bad Faith and Attorney's Fees Expert reports.

3. _____ **DEFENDANTS EXPERT WITNESS DESIGNATION.**
Sixty (60) days prior to trial, Defendants must designate experts and shall produce Expert Contractor Reports or Estimates, Engineering Reports, and any other Expert Report(s) that Defendant(s) intends to rely upon at the time of trial, with the exception of Bad Faith and Attorney's Fees Expert reports.

*******For all 2014 trial settings, Plaintiff(s)' deadline to produce expert reports is seventy-days (75) days prior to trial, and Defendant(s)' deadline to produce expert reports is forty-five (45) days prior to trial in order to give the Experts additional time to complete reports. *******

4. _____ **STATUS CONFERENCE**. Thirty (30) days prior to trial the parties for all ten (10) trial designated cases shall attend a status conference with the MDL Court. At that time, the MDL Court shall select the order in which the ten (10) designated trial cases will be released to the trial court for trial.



EXHIBIT
C

5. _____ **DISPOSITIVE MOTIONS & EXPERT CHALLENGES.** Dispositive Motions and Expert Challenges must be heard no later than ten (10) days prior to trial, with proper notice of any hearings as required by the Texas Rules of Civil Procedure

6. _____ **PLEADINGS.**
All pleadings must be amended or supplemented no later than seven (7) days before trial.

7. _____ **PRETRIAL HEARING.**
The Court will assign a pretrial hearing date and other deadlines pertaining to pretrial motions and exchanging trial documents at the 30-day status conference.

8. _____ **TRIAL.**

Signed this ____ day of _____, 2014.

_____
JUDGE

**AGREED AS TO FORM AND SUBSTANCE:**

_____

**ATTORNEY FOR PLAINTIFFS**

_____

**ATTORNEY(S) FOR DEFENDANTS**