

MDL NO. 14-0169

<p>IN RE STATE FARM LLOYDS HIDALGO COUNTY HAIL STORM LITIGATION</p>	<p>§ § § § § § §</p>	<p>IN THE DISTRICT COURT OF  HIDALGO COUNTY, TEXAS  206TH JUDICIAL DISTRICT</p>
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**ORDER ADOPTING RECOMMENDATION NO. 2 (SF) OF SPECIAL MASTER  
REGARDING PROTECTIVE ORDER**

On this day, the Court having received Recommendation No. 2 (SF) of Special Master Roberto L. Ramirez Regarding Protective Order, hereby approves such Recommendation.

IT IS THEREFORE ORDERED that the Court adopts Recommendation No. 2 (SF) of the Special Master regarding Protective Order attached as Exhibit "A" hereto and hereby approves the Protective Order attached as Exhibit 1 to Special Master Recommendation No. 2(SF), to govern and protect any confidential information which will be produced by the parties in these proceedings. It is further ordered that State Farm's Motion for Entry of Protective Order filed on July 9, 2014 is DENIED.

**IT IS SO ORDERED.**

10/6/2014

SIGNED this the \_\_\_\_\_ day of September, 2014.

  
 \_\_\_\_\_  
 Hon. Judge Rose Guerra Reyna

**AGREED AS TO FORM:**

/s/ J. Steve Mostyn  
 J. Steve Mostyn  
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 Amber Anderson Mostyn  
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**LIAISON COUNSEL FOR DEFENDANTS**

MDL NO. 14-0169

IN RE STATE FARM LLOYDS  
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IN THE DISTRICT COURT OF

HIDALGO COUNTY, TEXAS

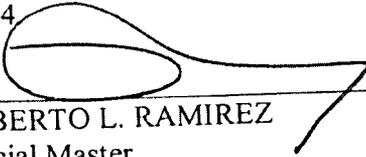
206TH JUDICIAL DISTRICT

**RECOMMENDATION NO. 2 (SF) OF SPECIAL MASTER REGARDING  
PROTECTIVE ORDER**

Pursuant to my appointment as Special Master in the above-referenced MDL proceedings, I hereby recommend that the Protective Order attached hereto as Exhibit I, be utilized in these proceedings to govern and protect any confidential information which will be produced by the parties in these proceedings. I further recommend that State Farm's Motion for Entry of Protective Order filed on July 9, 2014 be DENIED.

**IT IS SO RECOMMENDED.**

SIGNED this the 25<sup>th</sup> day of September, 2014

  
ROBERTO L. RAMIREZ  
Special Master

**AGREED AS TO FORM:**

/s/ J. Steve Mostyn  
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Amber Anderson Mostyn  
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MDL NO. 14-0169

IN RE STATE FARM LLOYDS  
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IN THE DISTRICT COURT OF  
  
HIDALGO COUNTY, TEXAS  
  
206TH JUDICIAL DISTRICT

**PROTECTIVE ORDER**

This Court finds that a Protective Order is warranted to protect Confidential Information, which will be produced by the parties and non-parties in this litigation, and that the following provisions, limitations, and prohibitions are appropriate pursuant to and in conformity with the Texas Rules of Civil Procedure. Therefore, it is hereby ORDERED that:

1. All Confidential Information produced or exchanged in the course of this litigation shall be used solely for the purpose of the preparation and trial of this litigation and other related litigation against a defendant insurer (including its employees) or any third party adjusting firm (including its employees) that adjusted claims arising out of a hail storm in Hidalgo County, Texas on or about March 29, 2012 or April 20, 2012, and for no other purpose. "Related Litigation" means a first-party lawsuit in Texas by an insured against the specific defendant insurer, adjuster, or adjusting company that produced the Confidential Information for damages to insured property arising out of a hail storm in Hidalgo County on or about March 29, 2012 or April 20, 2012 and ensuing losses. Confidential Information shall not be disclosed to any person except in accordance with the terms of this Order.
2. "Confidential Information," as used herein, means any information of any type which is designated as "Confidential" by any of the supplying or receiving parties, including

information received from non-parties, whether it is a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. At the sole discretion of the producing party, the producing party may place on any documents that are subject to this Protective Order, bates numbers and/or a legend to indicate the document is "Confidential," subject to a Protective Order and is produced under the specific cause number; however, the producing party shall not label designated documents with a watermark.

3. The disclosure of Confidential Information is restricted to Qualified Persons. "Qualified Persons," as used herein, means: the parties to this pending litigation arising out of a weather event on March 29, 2012 or April 20, 2012 in Hidalgo County, Texas; their respective counsel; counsel's staff; expert witnesses; outside service providers and consultants providing services related to document and ESI processing, hosting, review, and production; the Court; other court officials (including court reporters); the trier of fact pursuant to a sealing order; and any person so designated pursuant to paragraph 4 herein. If this Court so elects, any other person may be designated as a Qualified Person by order of this Court, after notice to all parties and a hearing.
4. Any party may serve a written request for authority to disclose Confidential Information to a person who is not a Qualified Person or counsel for the party designating party, and consent shall not be unreasonably withheld. However, until said requesting party receives written consent to further disclose the Confidential Information, the further disclosure is hereby prohibited and shall not be made absent further order of this Court. If the designating party grants its consent, then the person granted consent shall become a Qualified Person under this Order.

5. Lead counsel for each party shall provide a copy of this Order to any person to whom Confidential Information is to be disclosed, including each party such counsel represents, and shall advise such person of the scope and effect of the confidentiality provisions of this Order and the possibility of punishment by contempt for violation thereof. Further, before disclosing Confidential Information to any person, lead counsel for the party disclosing the information shall obtain the written acknowledgment of that person binding him or her to the terms of this Order. The written acknowledgment shall be in the form of "Exhibit A" attached hereto. Lead counsel for the disclosing party shall retain the original written acknowledgment, and furnish a copy of the signed written acknowledgment to counsel for the party designating the information as confidential within ten (10) business days.
6. Information shall be designated as Confidential Information within the meaning of this Protective Order by following the protocol below that corresponds to the format produced:
  - a. For hard-copy documents, by marking the first Bates-stamped page of the document and each subsequent Bates-stamped page thereof containing Confidential Information with the following legend: "Confidential & Proprietary/Produced Pursuant to a Conf. Agree./Prot. Order" or "Confidential Proprietary & Trade Secret/Produced Pursuant to a Conf. Agree./Prot. Order," but not so as to obscure the content of the document.
  - b. For static image productions by marking the first Bates-stamped page of the document and each subsequent Bates-stamped page thereof containing Confidential Information with the following legend: "Confidential & Proprietary/Produced Pursuant to a Conf. Agree./Prot. Order" or "Confidential Proprietary & Trade

Secret/Produced Pursuant to a Conf. Agree./Prot. Order,” but not so as to obscure the content of the image.

- c. For native format productions, by prominently labeling the delivery media for ESI designated as Confidential Information as follows: “Confidential & Proprietary/Produced Pursuant to a Conf. Agree./Prot. Order” or “Confidential Proprietary & Trade Secret/Produced Pursuant to a Conf. Agree./Prot. Order.” In addition, at the election of the producing party, the electronic file may have appended to the file’s name (immediately following its Bates identifier) the following protective legend: “CONFIDENTIAL-SUBJ\_TO\_PROTECTIVE\_ORDER\_IN\_CAUSE\_14-0169.” When any file so designated is converted to a hard copy or static image for any purpose, the document or image shall bear on each page a protective legend as described in 6.a. and 6.b. above. If a native file containing Confidential Information is used during a deposition, meet and confer, trial, or is otherwise disclosed post-production, the party introducing, referencing, or submitting the native file must append the the file’s name (immediately following its Bates identifier) the following protective legend: “CONFIDENTIAL-SUBJ\_TO\_PROTECTIVE\_ORDER\_IN\_CAUSE\_14-0169” if such legend does not already appear in the file name. Any party using a native file containing Confidential Information in a deposition, hearing, or at trial must indicate the designation on the record so that it is reflected in the transcript of the proceedings.
- d. At the sole discretion of the producing party, the producing party may place on any hard-copy documents that are subject to this Protective Order watermarks or seals

to indicate the document is subject to a Protective Order and is produced under the specific cause number.

7. Any party who inadvertently discloses Confidential Information during the discovery process shall, immediately upon discovery of the inadvertent disclosure, give notice in writing to the party or parties in possession of such information that the information is designated as "Confidential" and shall request its immediate return. After receipt of such notice, the parties shall treat the information so designated as Confidential Information under the terms of this Order, unless released of this duty by further order of this Court. Additionally, any party who inadvertently discloses Confidential Information during the discovery process shall, immediately upon discovery of the inadvertent disclosure, give notice in writing to the party which produced and provided this information, the names and addresses of the persons to whom it was disclosed and the date of the disclosure together with a copy of the notice by which the inadvertently disclosing party requested the immediate return of the documents.
8. Information previously produced during this litigation and not already marked as Confidential Information shall be retroactively designated within thirty (30) days of entry of this Order by providing written notice to the receiving parties of the Bates identifier or other identifying characteristics for the Confidential Information.
  - a. Within thirty (30) days of receipt of such notice, or such other time as may be agreed upon by the parties, any parties receiving such notice shall return to the designating party all undesignated copies of such information in their custody and possession, in exchange for the production of properly designated information, or alternatively (upon the agreement of the parties) shall (i) affix the legend to all

copies of such designated information in the party's possession, custody, or control consistent with the terms of this Protective Order, and/or (ii) with respect to ESI, take such reasonable steps as will reliably identify the item(s) as having been designated as Confidential Information.

b. Information that is unintentionally or inadvertently produced without being designated as Confidential Information may be retroactively designated by the producing party in the manner described in paragraph 7.a. above. If a retroactive designation is provided to the receiving party in accordance with Texas Rule of Civil Procedure 193.3(d) the receiving party must (i) make no further disclosure of such designated information except as allowed under this Order; (ii) take reasonable steps to notify any persons who were provided copies of such designated information of the terms of this Order; and (iii) take reasonable steps to reclaim any such designated information in the possession of any person not permitted access to such information under the terms of this Order. No party shall be deemed to have violated this Order for any disclosures made prior to notification of any subsequent designation.

9. Any party may request the party designating information as "Confidential" to consent to re-designate confidential information as not confidential, which request shall not be rejected absent a good-faith determination by the designating party that the Confidential Information is entitled to protection.

10. Deposition testimony is Confidential Information under the terms of this Order only if counsel for a party advises the court reporter and opposing counsel of that designation at the deposition, or by written designation to all parties and the court reporter within thirty

(30) business days after receiving the deposition transcript. All deposition transcripts shall be considered confidential until thirty (30) days following the receipt of the deposition transcript. The court reporter shall note on the record the designation of said information as Confidential and shall separately transcribe those portions of the testimony and mark the face of such portion of the transcript as "Confidential." The parties may use Confidential Information during any deposition, provided the witness is apprised of the terms of this Order and executes the acknowledgment attached hereto as Exhibit "A." The parties may use Confidential Information during a deposition only if the room is first cleared of all persons except the court reporter, the witness being deposed, counsel for the parties and any expert entitled to attend, and only if said witness executes the acknowledgement attached as Exhibit "A."

11. In the case of interrogatory answers, responses to request for production, and responses to requests for admissions, the designation of Confidential Information will be made by means of a statement in the answers or responses specifying that the answers or responses or specific parts thereof are designated as Confidential Information. A producing party shall place the following legend on each page of the interrogatory answers or responses to requests for admission: "Contains Confidential Information."
12. Confidential Information disclosed during a meet and confer or otherwise exchanged in informal discovery, shall be protected pursuant to this Order if counsel for the disclosing party advises the receiving party the information is Confidential Information. If the Confidential Information disclosed during a meet and confer or otherwise exchanged in informal discovery is in the form of hard-copy documents, static images, or native files,

that information shall be designated as Confidential Information pursuant to paragraphs 6 a., b., and/or c. depending on the format of the materials introduced.

13. At any time after the delivery of Confidential Documents, and after making a good-faith effort to resolve any disputes regarding whether any designated materials constitute Confidential Information, counsel of the party or parties receiving the Confidential Documents may challenge the Confidential designation of all or any portion thereof by providing written notice of the challenge to counsel for the party disclosing or producing the Confidential Documents. The party or parties disclosing or producing the Confidential Documents shall have twenty (20) days from the date of receipt of a written challenge to file a motion for specific protection with regard to any Confidential Documents in dispute. If the party or parties producing the Confidential Documents does not timely file a motion for specific protection, then the Confidential Documents in dispute shall no longer be subject to confidential treatment as provided in this Order.
14. If a timely motion for specific protection is filed, any disputed document will remain confidential until a contrary determination is made by the Court and all such documents, information or testimony shall continue to be treated as Confidential Information until this Court makes a contrary decision regarding the status of the documents, information or testimony. At any hearing to resolve a challenge of a Confidential designation, the party designating the information as "Confidential" shall have the burden to establish that party's right to protection as if this Order did not exist. A party's failure to challenge the designation of documents, information, or testimony as "Confidential" information does not constitute an admission that the document, information or testimony is, in fact, sensitive, confidential, or proprietary. No party waives its right to contend at trial or hearing

that such document, information or testimony is not sensitive, confidential, privileged or proprietary, provided the party provides notice of intention to do so at least twenty (20) days before such trial or hearing.

15. Any papers filed with the Court in this action that make reference to Confidential Information, or contain information derived therefrom, shall be considered Confidential Information and shall be governed by the terms of this Order. These papers shall be filed under seal and shall remain sealed with the District Clerk's Office so long as the materials retain their status as Confidential Information.
16. Pursuant to the agreement of the parties, no disclosure, production, or exchange of information in this case shall constitute a waiver of any applicable attorney-client privilege or of any applicable work product protection in this or any other federal or state proceeding. This Protective Order applies to any information disclosed, exchanged, produced, or discussed – whether intentionally or inadvertently – among the parties, their counsel and/or any agents (such as vendors and experts) in the course of this litigation. Upon learning of a production of privileged or work product protected information, the producing party shall within ten (10) days give all counsel of record notice of the production pursuant to Texas Rule of Civil Procedure 193.3(d). The receiving party must promptly return, sequester or destroy the produced information and all copies and destroy any notes that reproduce, copy, or otherwise disclose the substance of the privileged or work product protected information.
17. Further, production pursuant to this Protective Order shall not be deemed a waiver of:
  - a. Any party's right to object to any discovery request on any ground.

- b. Any party's right to seek an order compelling discovery with respect to any discovery request.
- c. Any party's use and review of its own Confidential Information in its sole and complete discretion.
- d. The status of any material as a trade secret.

18. Any Qualified Person who obtains information pursuant to this Order consents to submitting to the jurisdiction of this Court for enforcement of this Order.

This Order shall remain in effect unless or until amended, altered, modified, or vacated by the Court or by the written agreement of all parties to this action filed with the Court, pursuant to Rule 11 of the Texas Rules of Civil Procedure.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JUDGE PRESIDING

**EXHIBIT A**

**MDL NO. 14-0169**

**IN RE STATE FARM LLOYDS  
HIDALGO COUNTY HAIL STORM  
LITIGATION**

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**IN THE DISTRICT COURT OF**

**HIDALGO COUNTY, TEXAS**

**206TH JUDICIAL DISTRICT**

**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_, of \_\_\_\_\_, in order to be provided access to information designated as "Confidential" under the *Protective Order* entered in the 206th Judicial District Court of Hidalgo County, Texas (the "Court") in MDL No. 14-0169; *In Re: State Farm Lloyds Hidalgo County Hail Storm Litigation* In the District Court of Hidalgo County, Texas, 206th Judicial District (the "Litigation"), represent and agree as follows:

1. I have been provided with a copy of the Protective Order entered by the Court in the Litigation, I have reviewed said copy and I am familiar with its terms.
2. With regard to any and all "Confidential" information to which I am given access in connection with the Litigation, I agree to be bound by the provisions of the Protective Order.
3. I consent to the exercise of jurisdiction over me by the Court with respect to the Protective Order.
4. I agree that copies of this undertaking will be sent to counsel of record for all parties in the Litigation.

\_\_\_\_\_  
DATED:

\_\_\_\_\_  
SIGNATURE: