

MDL NOS. 13-0123 & 13-0130

**IN RE MARCH 29, 2012 AND APRIL
20, 2012 HAIL STORM LITIGATION**

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**IN THE DISTRICT COURT OF

HIDALGO COUNTY, TEXAS

206TH JUDICIAL DISTRICT**

**ORDER ADOPTING RECOMMENDATION NO. 15 OF SPECIAL MASTER REGARDING
PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TEXAS FAIR PLAN
ASSOCIATION AND ITS DEFENDANT ADJUSTERS TO SERVE SUPPLEMENTAL
ANSWERS TO IINTERROGATORIES AND PRODUCE RESPONSIVE DOCUMENTS TO
REQUESTS FOR PRODUCTION, AND MOTION TO STRIKE DEFENDANTS'
OBJECTIONS**

On this day, the Court having considered Recommendation No. 15 of the Special Master Roberto L. Ramirez Regarding *Plaintiffs' Motion to Compel Defendants Texas FAIR Plan Associations and Its Defendant Adjusters to Serve Supplemental Answers to Interrogatories and Produce Responsive Documents to Requests for Production, and Motion to Strike Defendants' Objections*, hereby approves such recommendation.

It is therefore ordered that the Court adopts Recommendation No. 15 of the Special Master attached hereto as Exhibit "A."

IT IS SO ORDERED.

SIGNED this the 10/2/2014 day of ~~September~~ October, 2014



Hon. Judge Rose Guerra Reyna

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IN THE DISTRICT COURT OF

IN RE MARCH 29, 2012 AND APRIL
20, 2012 HAIL STORM LITIGATION

HIDALGO COUNTY, TEXAS

206TH JUDICIAL DISTRICT

RECOMMENDATION NO. 15 OF SPECIAL MASTER REGARDING PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TEXAS FAIR PLAN ASSOCIATION AND ITS DEFENDANT ADJUSTERS TO SERVE SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND PRODUCE RESPONSIVE DOCUMENTS TO REQUESTS FOR PRODUCTION, AND MOTION TO STRIKE DEFENDANTS' OBJECTIONS

Pursuant to my appointment as Special Master in the above-referenced MDL proceeding, I considered *Plaintiffs' Motion to Compel Defendants to Serve Supplemental Answers to Interrogatories and Produce Responsive Documents to Requests for Production, and Motion to Strike Defendants' Objections* and Defendants Texas FAIR Plan Association's ("TFPA") and the related adjusters and adjusting companies' responses thereto, as well as the arguments of counsel at a July 30, 2014 conference/hearing conducted with the parties' counsel. In addition, as Special Master, I took note of agreements announced on the record by the parties relating to different aspects of the motion at issue. Furthermore, I confirmed that the parties placed their agreements on the record in accordance with the terms of Tex. R. Civ. P. 11. Accordingly, I hereby make the following recommendations regarding Plaintiffs' present motion:

General Matters

It is agreed to by the parties that the agreements by Defendants and recommendations by the Discovery Master subject to the Court's approval on the Case-Specific Interrogatories and Requests for Production to TFPA and the related adjusters requests for production and interrogatories and adjusting companies requests for production and interrogatories shall apply to all MDL cases Plaintiffs have pending against Defendant TFPA and the related adjusters and adjusting companies. This agreement contemplates that the same objections are being made to each discovery request by Defendants and the same recommendation by the discovery master and subsequent rulings were made by the Court. The agreement contemplates Defendants do not need to lodge the same objections in future responses to discovery in order for the objections to be preserved. This agreement specifically preserves all objections by Defendant to each discovery request as if said objections were specifically made and overruled in each case.

Defendants shall remove all objections and supplement all responses as agreed to or ordered by the Court herein with regard to the Institutional Interrogatories and Requests for Production and Claim-Specific Interrogatories and Requests for Production to TFPA, adjusting

companies requests for production and interrogatories, and individual defendants/adjusters requests for production and interrogatories for the seventeen (17) cases subject of the motion to compel by September 5, 2014.

General Objections

Defendants asserted General Objections to responses to master discovery. It was agreed by Defendants that Defendants will remove all General Objections to Master Requests for Production and Master Interrogatories. Defendants agreed to removed General Objection No. 6 and 13 to Requests for Production pursuant to the understanding that Plaintiffs are not seeking documents which qualify for the work product privilege.

Institutional Interrogatories to TFPA

It was agreed to by Defendants that Defendant TFPA shall remove all objections and supplement its answers to Institutional Interrogatories No. 1, 3, 4 (as to individuals that handled the claim, as handled is defined in Plaintiffs' definitions), 5, 6, 7, 8, and 11.

It was agreed to by Defendants that in response to Institutional Interrogatory No. 13, Defendant TFPA shall identify categories of items that were excluded from the application of overhead and profit in the preparation of estimates for claims arising out of the Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012.

It was agreed to by Defendants that in response to Institutional Interrogatory No. 14, Defendant TFPA shall identify categories of items that were excluded from the application of sales tax in the preparation of estimates for claims arising out of the Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012.

The following chart represents the recommendations to the remaining Institutional Interrogatories:

| No. | Institutional Interrogatories | Recommendations |
|-----|--|--|
| 2 | State the total number of Hidalgo County hail claims occurring on or about March 29, 2012 and/or April 20, 2012 that were reported to Defendant, identifying the number reported in each month. To the extent this information is reflected in a document produced to Plaintiff, Defendant can refer to such document. | Defendant's objections are overruled, and Defendant is ordered to supplement its response. |

Institutional Requests for Production

It was agreed to by Defendants that Defendant TFPA shall remove its objections, serve supplemental answers, and produce all responsive documents to Institutional Requests for Production Nos. 3, 4, 6, 8, 9, 10, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, and 30. It is agreed that Defendant will redact personal information from list in reference to #6.

The following chart represents the recommendations to the remaining Institutional Requests for Production:

| No. | Institutional RFP | Recommendations |
|-----|---|---|
| 2 | All XactAnalysis and/or Simsol management reports regarding claims arising out of Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012. Defendant may redact names and any other identifying information of insureds unrelated to tis lawsuit. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 5 | All documents to and from the Texas Department of Insurance, the Texas Insurance Commissioner and/or their agents, relating to the handling of hail and/or windstorm claims within the last three (3) years. This request includes all bulletins received by Defendant. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. The time frame will run from the date of the weather event made the basis of the lawsuit. |
| 11 | All documents reflecting summaries of total payments made by Defendant on claims for claims arising out of the Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 12 | All documents regarding generalized assessment, review, evaluation and/or summary of Defendant's handling of claims arising out of the Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 13 | Any document general in nature which applies to more than one claim created, gathered, or reviewed by Defendant relating to Hidalgo County hail storm claims occurring on or about March 29, 2012 and/or April 20, 2012, including any analysis of the total amount paid on claims, time open, responsiveness, compliance with company policies and procedures, compliance with Texas Insurance Code, the number of reopened claims, the reason for reopening the claim, and the total amount paid on reopened claims. This request includes any follow-up documents. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |

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| 15 | All documents relating to weather data general in nature which applies to more than one claim in Defendant's possession for Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 16 | Any documents and/or summaries that show the average amount paid per claim per adjuster for claims arising out of the Hidalgo County hail storm claims occurring on or about March 29, 2012 and/or April 20, 2012. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 27 | A document showing the total number of claims arising out of the Hidalgo County hail storm claims occurring on or about March 29, 2012 and/or April 20, 2012 that were reported to Defendant. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 28 | A document showing total number of people employed by Defendant (directly or indirectly) for each month to handle any aspect arising out of the Hidalgo County hail storm claims occurring on or about March 29, 2012 and/or April 20, 2012. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |

Claim-Specific Interrogatories to TFPA

It was agreed to by Defendants that Defendant TFPA shall remove its objections and supplement its responses to Claim-Specific Interrogatories to TFPA Nos. 3, 4, 5, 8, 13, 22, 23, 24, 25, 26, 27, and 29. Defendants agreed to remove the objections to 22-27 pursuant to the clarification made on the record that these requests do not require Defendants to do post-litigation review of these files to determine violations.

It was agreed to by Defendants that Defendant TFPA shall supplement its answer to Claim Specific Interrogatory No. 6, 9, 11, 14, 17, 18, 20, 21, 28, and 30 to provide all responsive information.

It was agreed to by Defendants that Defendant TFPA shall supplement its answer to Claim Specific Interrogatory No. 2 to specifically identify all persons and/or entities that handled (as handle is defined by Plaintiffs in Plaintiffs definitions to Master Discovery) the claim made the basis of the Lawsuit on behalf of Defendant.

It was agreed to by Defendants that Defendant TFPA shall supplement its answer to Claim Specific Interrogatory No. 16 to confirm on each of the seventeen (17) cases at issue that this is how Defendant determined O&P should be applied to each of the 17 cases.

Regarding Claim-Specific Interrogatory No. 31, Plaintiffs agreed to withdraw subparts (b) through (f). It was agreed to by Defendants that Defendant TFPA shall supplement its answer to subpart (a).

The following chart represents the recommendations to the remaining Claim-Specific Interrogatories to TFPA:

| No. | Claim Specific Interrogatories | Recommendations |
|------------|--|---|
| 7 | Does Defendant contend that Plaintiff(s) failed to provide proper notice of the claim made the basis of this lawsuit under either the policy or the Texas Insurance Code, and, if so, describe how the notice was deficient, identifying any resulting prejudice caused to Defendant. | Defendant is ordered to supplement its response with and provide all responsive information. |
| 10 | At the time the claim made the basis of the Lawsuit was investigated by Defendant (and prior to anticipation of litigation), state whether the Plaintiff(s) failed to exhibit/provide access to the Property as reasonably requested by Defendant, and, if so, describe how Plaintiffs failed to do so, identifying any resulting prejudice caused to Defendant. | Defendant is ordered to supplement its answer and provide all responsive information. |
| 15 | Identify all exclusions under the Policy applied to the claim made the basis of this Lawsuit, and for each exclusion identified, state the reason(s) that Defendant relied upon to apply that exclusion. | Defendant is ordered to supplement its answer and provide all responsive information. |
| 32 | If you contend that the Policy is void for any reason, state the specific factual bases for that contention, identifying any and all investigations, the factors considered and the conclusion reached and the evidence that is the basis for that conclusion. | Defendant's objections are overruled, and Defendant is ordered to supplement its answer and provide all responsive information. |
| 33 | If you contend that the Plaintiff(s) made any misrepresentation regarding the Policy or the claim made the basis of the Lawsuit, state what specific misrepresentation(s) was/were made and the factual bases for your contention. | Defendant's objections are overruled, and Defendant is ordered to supplement its answer and provide all responsive information. |

Claim-Specific Requests for Production to TFPA

It was agreed to by Defendants that Defendant TFPA shall remove its objections, serve supplemental answers, and produce all responsive documents to Claim-Specific Requests for Production to TFPA Nos. 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 20, and 22.

It was agreed to by Defendants that Defendant TFPA shall remove its objections, serve supplemental answers, and produce all responsive documents to Claim-Specific Requests for Production to TFPA Nos. 5, 7, and 17 with the understanding that Plaintiffs are not seeking documents which are protected by the work-product privilege.

It was agreed to by Defendants that Defendant TFPA shall supplement its answer and produce all responsive documents to Claim-Specific Request for Production to TFPA No. 24.

The following chart represents the recommendations to the remaining Claim-Specific Requests for Production to TFPA:

| No. | Claim Specific RFP | Recommendations |
|-----|---|---|
| 18 | All documents related to work performance, claims patterns, claims problems, commendations, claims trends, claims recognitions and/or concerns for any person who handled the claim made the basis of this Lawsuit. | With the understanding that Plaintiffs agree to limit the request to ten (10) years prior to the claim made the basis of the lawsuit, Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |

Claim-Specific Interrogatories to Adjusting Companies

It was agreed to by Defendants that Defendants shall remove their objections, serve supplemental answers, and produce all responsive documents to Claim-Specific Interrogatories to Adjusting Companies Nos. 3, 4, 5, 6, 11, 13, 15, and 16.

It was agreed to by Defendants that in response to Claim-Specific Interrogatory No. 12, Defendant Adjusting Companies shall identify categories of items that were excluded from the application of overhead and profit in the preparation of estimates for claims arising out of the Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012.

It was agreed to by Defendants that in response to Claim-Specific Interrogatory No. 14, Defendant Adjusting Companies shall identify categories of items that were excluded from the application of sales tax in the preparation of estimates for claims arising out of the Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012.

The following chart represents the recommendations to the remaining Claim-Specific Requests for Interrogatories to Adjusting Companies:

| No. | Claim Specific RFP | Recommendations |
|-----|---|---|
| 9 | Identify all price lists used by Defendant for the handling of claims assigned by Defendant insurer arising out of Hidalgo county hail storms occurring on or about March 29, 2012 and/or April 20, 2012. For each price list, identify the manufacturer, version, date, and geographical area. | Defendant's objections are overruled, and Defendant is ordered to supplement its answer and provide all responsive information. |

Claim-Specific Requests for Production to Adjusting Companies

It was agreed to by Defendants that Defendants shall remove their objections, serve supplemental answers, and produce all responsive documents to Claim-Specific Requests for Production to Adjusting Companies Nos. 1, 2, 5, 7, 8, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30.

It was agreed to by Defendants that Defendants shall serve supplemental answers and produce all responsive documents to Claim-Specific Request for Production to Adjusting Companies No. 4.

The parties agreed to remove the word "generalized" from the Claim-Specific Requests for Production to Adjusting Companies Nos. 16, Defendants will remove their objections, serve supplemental answers, and produce all responsive documents.

The parties agreed that the phrase "the last three years" means the three years prior to the date of loss in Claim-Specific Request for Production No. 19. Accordingly, Defendants will remove their objections, serve supplemental answers, and produce all responsive documents.

The following chart represents the recommendations to the remaining Claim-Specific Requests for Production to Adjusting Companies:

| No. | Claim Specific RFP | Recommendations |
|-----|--|---|
| 10 | All documents reflecting amounts billed to or payments received from the defendant insurance company for any services provided by Defendant on Hidalgo County hail storms occurring on or about March 29, 2012 and/or April 20, 2012. A summary is acceptable in lieu of actual invoices or payments. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 11 | All documents identifying generalized problems regarding claims handling, concerns, lessons learned, remedial measures, etc. analyzing Defendants' adjuster's and/or adjusting company's handling of the Hidalgo County hail claims occurring on or about March 29, 2012 and/or April 20, 2012. This request is limited to the past 5 years. | Defendants' objections are overruled, and Defendants are ordered to supplement their response and produce all documents responsive to this request. |
| 15 | All confidentiality agreements and/or instructions regarding confidentiality in | Defendants' objections are overruled, and |

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| effect at the time of Plaintiffs' claim between Defendant and any person(s) and/or entity(ies) who handled the claim made the basis of the Lawsuit | Defendants are ordered to supplement their response and produce all documents responsive to this request. |
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Claim-Specific Interrogatories to Individual Defendants/Adjusters

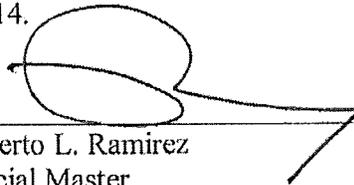
It was agreed to by Defendants that Defendants shall remove their objections, serve supplemental answers, and produce all responsive documents to Claim-Specific Requests for Interrogatories to Individual Defendants/Adjusters Nos. 2, 3, 4, 6, 9, 11, 12, 13, 14, 15, 16, 17 and 18.

It was agreed to by Defendants that Defendants shall answer Claim-Specific Requests for Interrogatories to Individual Defendants/Adjusters Nos. 7, 8, and 9 without objection for all individual defendants.

Claim-Specific Requests for Production to Individual Defendants/Adjusters

It was agreed to by Defendants that Defendants shall remove their objections, serve supplemental answers, and produce all responsive documents to Claim-Specific Requests for Production to Individual Defendants/Adjusters Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17 and 18.

Signed this 24th day of SEPTEMBER, 2014.



Roberto L. Ramirez
Special Master

APPROVED AS TO FORM ONLY:

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