

CAUSE NO. C-0467-13-D

**MARTIN ALMAGUER AND
MARICELA A. ALMAGUER,**
Plaintiffs,

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IN THE DISTRICT COURT OF

v.

HIDALGO COUNTY, TEXAS

**NATIONAL LLOYDS INSURANCE
COMPANY, WARDLAW CLAIMS
SERVICE, INC., AND JEREMY
CABRERA,**
Defendants.

206TH JUDICIAL DISTRICT

CAUSE NO. C-1573-13-F

**KELLY DIZDAR AND MARK
DIZDAR, INDIVIDUALLY AND
D/B/A DIZDAR DEVELOPMENT,**
Plaintiffs,

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IN THE DISTRICT COURT OF

v.

HIDALGO COUNTY, TEXAS

**NATIONAL LLOYDS INSURANCE
COMPANY, WARDLAW CLAIMS
SERVICE, INC., DENA R. WALLER,
AND HAYLIE WARDLAW,**
Defendants.

206TH JUDICIAL DISTRICT

CAUSE NO. C-0330-13-G

**DANNY GARCIA AND YVONNE S.
GARCIA,**
Plaintiffs,

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IN THE DISTRICT COURT OF

v.

HIDALGO COUNTY, TEXAS

**NATIONAL LLOYDS INSURANCE
COMPANY, IDEAL ADJUSTING,
INC., AND JOSE MEDELLIN,**
Defendants.

206TH JUDICIAL DISTRICT

CAUSE NO. C-1137-13-B

ALFREDO ORTIZ RODRIGUEZ
AND ALICIA M. RODRIGUEZ,
Plaintiffs,

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IN THE DISTRICT COURT OF

v.

HIDALGO COUNTY, TEXAS

NATIONAL LLOYDS INSURANCE
COMPANY, WARDLAW CLAIMS
SERVICE, INC., AND ARNOLD P.
NERIO,
Defendants.

206TH JUDICIAL DISTRICT

**ORDER ADOPTING SPECIAL MASTER RECOMMENDATION NO. 17 REGARDING
PLAINTIFFS' MOTION FOR LEAVE TO SERVE ADDITIONAL TRIAL DISCOVERY**

On this day, the Court having received Recommendation No. 17 of Special Master Roberto L. Ramirez Regarding Plaintiffs' Motion for Leave to Serve Additional Trial Discovery, hereby approves such Recommendation.

IT IS THEREFORE ORDERED that the Court adopts Recommendation No. 17 of the Special Master in the above-referenced matters and Plaintiffs' Motion for Leave to Serve Additional Discovery is Granted consistent with the Recommendation.

IT IS SO ORDERED.

SIGNED and ENTERED this _____ day of 4/29/2015, 2015

Hon. Judge Rose Guerra Reyna

Copies To:
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Amber Mostyn
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EXHIBIT “A”

CAUSE NO. C-0467-13-D

MARTIN ALMAGUER AND
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IN THE DISTRICT COURT OF

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Defendants.

206TH JUDICIAL DISTRICT

CAUSE NO. C-1573-13-F

KELLY DIZDAR AND MARK
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IN THE DISTRICT COURT OF

v.

HIDALGO COUNTY, TEXAS

NATIONAL LLOYDS INSURANCE
COMPANY, WARDLAW CLAIMS
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AND HAYLIE WARDLAW,
Defendants.

206TH JUDICIAL DISTRICT

CAUSE NO. C-0330-13-G

DANNY GARCIA AND YVONNE S.
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IN THE DISTRICT COURT OF

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Defendants.

206TH JUDICIAL DISTRICT

CAUSE NO. C-1137-13-B

ALFREDO ORTIZ RODRIGUEZ
AND ALICIA M. RODRIGUEZ,
Plaintiffs,

v.

NATIONAL LLOYDS INSURANCE
COMPANY, WARDLAW CLAIMS
SERVICE, INC., AND ARNOLD P.
NERIO,
Defendants.

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IN THE DISTRICT COURT OF

HIDALGO COUNTY, TEXAS

206TH JUDICIAL DISTRICT

RECOMMENDATION NO. 17 OF SPECIAL MASTER REGARDING PLAINTIFFS'
MOTION FOR LEAVE TO SERVE ADDITIONAL TRIAL DISCOVERY

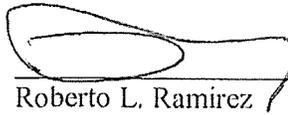
Pursuant to my appointment as Special Master in the MDL that encompasses the above-referenced cases, I considered *Plaintiffs' Motion for Leave to Serve Additional Trial Discovery* in the above-referenced cases, Defendants' responses thereto, as well as all supplemental briefing on the motion presented by the parties, and the arguments of counsel and evidence presented at the March 19, 2015 conference/hearing conducted with the parties' counsel. For reasons set forth below, my recommendation is to grant the motion.

Plaintiffs seek leave of Court to propound additional discovery relating to the issue of Defendants' attorney fees. The appropriate inquiry is whether discoverability of Defendants' attorney's fees is relevant and/or reasonably calculated to lead to the discovery of admissible evidence in this case. I have concluded that this type of evidence is relevant to issues in this case under Tex. R. Civ. P.192.3 (a). In doing so, I am persuaded in part by Judge Mike Miller's decision and reasoning set forth in his Order dated June 13, 2013 issued in connection with the Hurricane Ike litigation, attached as Exhibit "A" to Plaintiffs' Supplemental Briefing in Support of their Motion for Leave to Serve Additional Trial Discovery. Specifically, I agree with Judge Miller's analysis and discussion of the Fort Worth Court of Appeals' decision in MCI Telecomm. Corp. v. Crowley, 899 S.W. 2d 399 (Tex. App.-Fort Worth 1995, orig. proceeding) regarding the absence of any detailed discussion or analysis as to why such evidence would be "patently irrelevant." In that regard, I take note of Justice Hecht's concurrence in El Apple I., Ltd. v. Olivas, 370 S.W. 3d 757, 767 (Tex. 2012) regarding the relevancy of such information. In addition, to the extent the discovery sought involves material from expert witnesses on the issue of attorney's fees; I relied in part on the scope of discovery permitted by Tex. R. Civ. P. 192.3 (e).

In the course of reviewing other cases cited in the parties' legal briefs, while I acknowledge that cases outside of the State of Texas do not constitute controlling authority, I nonetheless take note of United States District Judge Moye's conclusion in Naismith v.

Professional Golfers Asso., 85 F.R.D 552, 563 (N.D. Ga. 1979), that evidence of a defendants' attorneys' fees is "at least minimally relevant." Even though distinctions can be made regarding the defendants' counsel's precedential valuation of a case and plaintiffs' attorneys' pursuit of frivolous claims and/or advocacy of certain motions, "[t]hese factors would be significant in deciding what weight to give evidence of defendants' attorneys' hours, but they do not preclude the discovery of such evidence." Id. When defense counsel themselves place the reasonableness of the hours and rates charged by plaintiffs' attorneys and utilize their own hours and rates as yardsticks by which to assess the reasonableness of those sought by plaintiffs, records of such charges are relevant and discoverable. See Mendez v. Radec Corp., 818 F. Supp. 2d 667, 669 (W.D. N.Y. 2011). Accordingly, I hereby recommend *Plaintiffs' Motion for Leave to Serve Additional Trial Discovery* be granted and the Court grant leave so that Plaintiffs may propound additional discovery on Defendants consistent with my April 1, 2015 letter to counsel, the recommendations made by the Special Master at the March 19, 2015 hearing, and the agreements of counsel made at the March 19, 2015 hearing/conference.

Signed this 21st day of April, 2015.



Roberto L. Ramirez
Special Master