

FILED

Chris Daniel
District Clerk

JUL 31 2017

P8

HARRIS COUNTY CAUSE NO. 2016-54688

WEBB COUNTY CAUSE NO. 2016CV2002017 D5

TARRANT COUNTY CAUSE NO. 048-000002-16

Time: _____
By: _____
Harris County, Texas
Deputy

IN RE: § IN THE DISTRICT COURT OF
FARMERS INSURANCE §
COMPANY WIND/HAIL § HARRIS COUNTY (281st), TEXAS
STORM LITIGATION 2 § WEBB COUNTY (341st), TEXAS AND
§ TARRANT COUNTY (48th), TEXAS

APRX
ENTX

AGREED CASE MANAGEMENT ORDER

The Multidistrict Litigation Panel issued an Order dated June 20, 2016, in MDL Docket No. 16-0142, establishing three (3) MDL Pretrial Courts and assigning cases to the Hon. Elma Teresa Salinas Ender, retired Judge of the 341st District Court of Webb County, the Hon. Sylvia A. Matthews, Judge of the 281 n District Court of Harris County, and the Hon. David L. Evans, Judge of the 48th District Court of Tarrant County (the "Pretrial Courts").

According to the MDL Panel's Order, the three Pretrial Courts decide all common pretrial issues together as a panel and decide case-specific issues as individual pretrial courts.

The Pretrial Courts, acting as a panel, find that the expeditious and efficient process of pretrial matters is necessary to prepare these cases for trial. Therefore, the Pretrial Courts ORDER that the following will govern the management of the cases pending in the Pretrial Courts.

IT IS SPECIFICALLY ORDERED AS FOLLOWS:

This Case Management Order shall apply to all cases pending in the three MDL Pretrial Courts for the Farmers Insurance Company Wind/Hail Storm Litigation 2 (Harris County Cause

RECORDER'S MEMORANDUM
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No. 2016-54688, Webb County Cause No. 2016CV2002017 D5, and Tarrant County Cause No. 048-000002-16) and all cases that are transferred to the three MDL Pretrial Courts.

Stay. Cases pending in the Pretrial Courts are stayed unless otherwise provided in this Order.

Mediation. All cases pending in the Pretrial Courts shall be mediated, unless settled prior to mediation. Within 60 days of the signing of this Order or the date a case is transferred to a Pretrial Court, whichever is later, the Parties shall agree on a mediator and a date for mediation for the case.

The mediation shall occur within 120 days after the mediator is selected, unless otherwise agreed by the Parties. Plaintiff and corporate representative for Defendant shall be physically present during the mediation, unless otherwise agreed.

Exchange of Information. No less than 30 days before the mediation date, the Parties shall exchange information and documentation pertaining to the wind/hail storm claim, including the following: estimates regarding the damages claimed; repair receipts or invoices; wind/hail claims payments received by Plaintiffs); photographs regarding the damages claimed; expert reports; engineering reports; the applicable insurance policy; non-privileged portion of the claim file and the adjuster's file (including all claim diary notes, activity logs, loss notes, and email correspondence regarding the insurance claim); payment ledger; payment log; and proof of payment from the carrier, if any.

If Farmers is not in possession of the adjusting company's file, and the file is not available from another party, then Farmers shall use its best efforts to obtain the adjuster's file so that it may be included in the exchange of information.

Mediation Expert Reports. Expert reports used for settlement purposes only shall not be discoverable unless the expert is designated as a witness to testify at the time of trial or the report is otherwise made discoverable.

Property Inspection. In preparation for mediation, Defendants may inspect the property involved, at a time agreed upon by the Parties. If mediation is not successful, the Defendants may re-inspect the property, at a time agreed upon by the Parties.

Impasse. Impasse may be declared by a) a mediator, in writing; or b) written agreement of the parties; or c) order of the appropriate Pretrial Court. In either a) or b), either party shall file a Notice of Impasse in the Pretrial Court where the case is pending. The documentation evidencing impasse shall be attached.

Either Plaintiff or Defendant may move for transfer of the physical or electronic file from the originating trial court to the appropriate Pretrial Court. When the file is transferred, a new file with a new cause number will be opened by the clerk of that Pretrial Court.

POST-IMPASSE.

Docket Control Order. Thirty (30) days after impasse is declared, the stay shall be lifted. The parties shall enter an Agreed Docket Control Order – Phase I thirty (30) days after impasse is declared. The MDL Approved Docket Control Order Phase I and Phase II are attached hereto as Exhibit "A".

Appraisal. Either party may demand appraisal according to the policy provisions. If the Parties cannot agree on an umpire, the Parties shall move for appointment of an umpire by the Pretrial Court where the case is pending. If the claims are not resolved by the appraisal, either Plaintiff or Defendant may elect to mediate.

Master Discovery A party may request another party to answer discovery by serving a letter identifying the appropriate court-approved Master Discovery requests the opposing party shall answer. No party shall serve a letter requesting discovery be answered until after the Mediator's Impasse Statement (Exhibit B) is filed with the Court declaring an impasse.

The parties may serve requests for admissions and requests for disclosure in accordance with the Texas Rules of Civil Procedure.

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 the rulings of the MDL Court.

Institutional Master Discovery Plaintiffs may propound Institutional Interrogatories and Requests for Production as approved by the Court on Defendant Farmers and other affiliated adjusting company defendants after any case has impasse. Farmers and other defendants (when applicable) shall provide Responses and Objections to Institutional Interrogatories and Institutional Requests for Production only one time.

Due to the Nature of this litigation, Farmers and its related entities, agree to supplement their responses to Institutional Master Discovery on January 15th every year or provide an affirmation stating that the information contained in their responses is current (i.e. their policies and procedures regarding claims handling have not changed).

Party and Fact Witness Depositions The deposition of any case-specific witness shall be limited to no more than three (3) hours per side (four (4) hours per side when a translator is utilized).

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.

The parties agree in principal to the following deposition schedule. Each party has reserved the right to postpone depositions in any specific case pending the outcome of any motions to compel or other outstanding discovery matters in that case. The depositions may take place at any location agreed to by the parties. It is agreed, and ordered that, no depositions shall take place the week of Thanksgiving or from December 23rd through January 2nd, unless all parties agree otherwise in writing. Depositions will not be scheduled in any individual case until thirty days

after master discovery responses have been served by both sides.

Plaintiff Depositions For those cases in which master discovery responses have been served by both sides, the parties will endeavor to schedule the cases beginning with the oldest impasse case and moving in chronological order to the newest.

Fact Witness Depositions Depositions of individual fact witnesses involved in the specific claim at issue will begin after the deposition of the Plaintiff(s) in that case has been completed.

Corporate Representative Depositions Absent a showing of good cause and order from the MDL Court, Corporate Representative depositions will be taken for no more than fifteen (15) hours per designated individual. If multiple individuals are designated for the same entity or firm, each individual designated to testify on seven (7) or less corporate representative topics may be deposed for a maximum of ten (10) hours, and each individual designated to testify on eight (8) or more topics may be deposed for a maximum of fifteen (15) hours. These deposition limitations include Corporate Representative(s) on behalf of each Farmers entity, and the Corporate Representatives of any of the independent adjusting firms retained by the Defendant Insurer for handling claims arising out of the dates of loss included by this MDL (if any).

Plaintiffs 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. Plaintiffs Steering Committee shall provide the list of corporate representative topics no later than twenty-one (21) days before the deposition date, and counsel for Defendant will designate the person(s) for those issues no later than ten (10) days before the deposition.

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.

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 Pre - Trial MDL Court, showing good cause for the necessity of an additional deposition.

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 on his/her case-specific knowledge for no more than three (3) hours.

Status Conferences/Standing Hearings Shall be noticed by the Court as needed. The parties have the right to request a status conference/standing hearing date should the Court not have a Status Conference set at the time the Court's intervention is needed.

MISCELLANEOUS PROVISIONS

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

Dispositive Motions. No case-specific dispositive motions may be heard during the time a case is stayed. The stay will not prevent the filing or hearing of dispositive motions concerning pretrial issues for the Pretrial Courts to decide acting as a panel.

Liaison Counsel. Counsel for Plaintiffs and counsel for Farmers Insurance may establish Liaison Counsel. Each side shall notify the MDL Courts of their respective designations within 30 days of the signing of this Order.

Requests for Relief. Motions that require rulings from the Pretrial Courts sitting as a panel shall include the style for all three courts (as indicated above). Motions that are case specific shall include the style of only the Pretrial Court where the case is pending.

Application of Rules. The Texas Rules of Civil Procedure shall apply to these proceedings.

Posting. This Order shall be posted to the website of the 281st Judicial District Court at www.justex.net/civil/281.

SIGNED this _____ day of 7/31, 2017.


Hon. Elma Teresa Salinas Ender


Hon. David L. Evans*


Hon. Sylvia A. Matthews

AGREED TO:

MOSTYN LAW
/s/ Amber Anderson Mostyn
Amber Anderson Mostyn
State Bar No. 90001704

**Signed with permission*

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