

**FILED**

Chris Daniel  
District Clerk

MAY 10 2016

HARRIS COUNTY CAUSE NO. 2015-37067

WEBB COUNTY CAUSE NO. 2015-CV2-002272-D5

TARRANT COUNTY CAUSE NO. 048-000001-15

Time: \_\_\_\_\_

Harris County, Texas

By \_\_\_\_\_

Deputy

IN RE: FARMERS INSURANCE  
COMPANY WIND/HAIL STORM  
LITIGATION

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IN THE DISTRICT COURTS  
OF HARRIS COUNTY (281<sup>st</sup>),  
WEBB COUNTY (341<sup>st</sup>) and  
TARRANT COUNTY (48<sup>th</sup>),  
TEXAS

**AGREED CASE MANAGEMENT ORDER NO. 2 REGARDING IMPASSED  
CASES**

After consideration of pretrial and trial-related issues and discussion with counsel the  
Pre-Trial Courts hereby enter the following order for Impassed Cases.

**I.**

**DOCKET CONTROL ORDER**

Pursuant to the Case Management Order entered on July 26, 2015, the parties shall enter  
into Agreed Docket Control Order – Phase I thirty (30) days after impasse is declared. The  
MDL Approved Docket Control Orders Phase I and Phase II are attached hereto as Exhibit A.

**II.**

**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. As contemplated in

**RECORDER'S MEMORIANDUM**

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at the time of imaging*

the Case Management Order previously issued by the Panel, master discovery may be served after the Mediator's Impasse Statement is filed with the Court.

The parties may serve requests for admissions 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.

## **III.**

### **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 23<sup>rd</sup> 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.

### **IV.**

#### **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 Defendants 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.

#### IV.

#### **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.

SIGNED ~~and ENTERED~~ this the 10<sup>th</sup> day of May, 2016.

*E Ender* \*

Hon. Elma Teresa Salinas Ender

*D Evans* \*

Hon. David L. Evans

*S Matthews*

Hon. Sylvia A. Matthews

*\*by permission*

**AGREED TO:**

**MOSTYN LAW**

/s/ Amber Anderson Mostyn

Amber Anderson Mostyn

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Molly K. Bowen

State Bar No. 24069898

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/s/ Scot Doyen

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(713) 580-8905 (Facsimile)

**LIAISON COUNSEL FOR DEFENDANTS**

**EXHIBIT "A"**

**TRANSFERRED TO**

CAUSE NO. \_\_\_\_\_

IN RE: FARMERS INSURANCE  
COMPANY WIND/HAIL STORM  
LITIGATION

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IN THE DISTRICT COURT OF  
\_\_\_\_ COUNTY, TEXAS  
\_\_\_\_ JUDICIAL DISTRICT

**TRANSFERRED FROM**

CAUSE NO. \_\_\_\_\_

Plaintiffs

vs.

Defendants

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IN THE DISTRICT COURT OF  
\_\_\_\_ COUNTY, TEXAS  
\_\_\_\_ JUDICIAL DISTRICT

**AGREED DOCKET CONTROL ORDER – PHASE I**

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

1. \_\_\_\_\_ **IMPASSE.**
2. \_\_\_\_\_ **MASTER DISCOVERY DUE DATE.**  
Thirty (30) days from the date letter requesting discovery is sent.
3. \_\_\_\_\_ **APPRAISAL DEADLINE**  
Deadline for either party to invoke appraisal is thirty days from first tendered responses to case-specific master discovery by any party.
4. \_\_\_\_\_ **JOINDER.**  
Sixty (60) days from first tendered responses to case-specific master discovery by any party.
5. \_\_\_\_\_ **PLAINTIFF(S), DEFENDANT(S), ADJUSTER(S) and CORPORATE**

**REPRESENTATIVE(S) DEPOSITIONS DEADLINE.**

One hundred fifty (150) days from first tendered responses to case-specific master discovery by any party. Plaintiff depositions will occur prior to Defendant fact witness depositions. However, all deposition dates shall be agreed to at the same time.

6. \_\_\_\_\_

**DEADLINE TO SET A STATUS CONFERENCE TO RECEIVE A TRIAL DATE.**

One hundred fifty (150) days from first tendered responses to case-specific master discovery by any party.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

**AGREED AS TO FORM AND SUBSTANCE:**

\_\_\_\_\_  
**ATTORNEY FOR PLAINTIFFS**

\_\_\_\_\_  
**ATTORNEY(S) FOR DEFENDANTS**



**EXHIBIT "A"**

**TRANSFERRED TO**

CAUSE NO. \_\_\_\_\_

IN RE: FARMERS INSURANCE  
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IN THE DISTRICT COURT OF  
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\_\_\_\_ JUDICIAL DISTRICT

**TRANSFERRED FROM**

CAUSE NO. \_\_\_\_\_

Plaintiffs

vs.

Defendants

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IN THE DISTRICT COURT OF  
\_\_\_\_ COUNTY, TEXAS  
\_\_\_\_ JUDICIAL DISTRICT

**AGREED DOCKET CONTROL ORDER – PHASE II**

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

1. \_\_\_\_\_

**PLAINTIFF'S EXPERT DESIGNATION DEADLINE.**

One-hundred and twenty (120) days prior to trial, Plaintiff(s) 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.

2. \_\_\_\_\_

**DEFENDANT'S EXPERT WITNESS DESIGNATION DEADLINE.**

Ninety (90) days prior to trial, Defendant(s) 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.

3. \_\_\_\_\_

**DISCOVERY.**

Forty-five (45) days prior to Trial.

4. \_\_\_\_\_

**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.

5. \_\_\_\_\_

**PLEADINGS.**

All pleadings must be amended or supplemented no later than thirty (30) days before Trial.

6. \_\_\_\_\_

**PRE-TRIAL.**

7. \_\_\_\_\_

**TRIAL**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

**AGREED AS TO FORM AND SUBSTANCE:**

\_\_\_\_\_  
ATTORNEY FOR PLAINTIFFS

\_\_\_\_\_  
ATTORNEY(S) FOR DEFENDANTS

**TRANSFERRED TO**

CAUSE NO. \_\_\_\_\_

IN RE: FARMERS INSURANCE  
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LITIGATION

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IN THE DISTRICT COURT OF  
\_\_\_\_\_ COUNTY, TEXAS  
\_\_\_\_\_ JUDICIAL DISTRICT

**TRANSFERRED FROM**

CAUSE NO. \_\_\_\_\_

Plaintiffs

vs.

Defendants

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IN THE DISTRICT COURT OF  
\_\_\_\_\_ COUNTY, TEXAS  
\_\_\_\_\_ JUDICIAL DISTRICT

**MEDIATOR'S IMPASSE STATEMENT**

The above-referenced case mediated and the case did not settle. In accordance with the Court's Orders, the date that any party (or the mediator) files this Mediator's Statement with the Court shall establish the date of "impasse."

Respectfully,

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Mediator

