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CAUSE NO. 22-CV-1827

WILLIAM GREER,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	**GALVESTON COUNTY, TEXAS**
	§	
TEXAS WINDSTORM INSURANCE	§	
ASSOCIATION,	§	
Defendant	§	**405th JUDICIAL DISTRICT**

AGREED MOTION TO ABATE OR, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE

TO THE HONORABLE COURT:

COMES NOW Defendant Texas Windstorm Insurance Association ("TWIA") and Plaintiff William Greer's filing this Agreed Motion to Abate or, in the Alternative, Motion for Continuance, and in support thereof would respectfully show the Court as follows:

I. MOTION TO ABATE

Background

This matter is currently set for trial on June 20, 2023. On February 23, 2023, the 13th Court of Appeals in Corpus Christi issued an opinion in 13-21-00167-CV, *Stephen Pruski v. Texas Windstorm Insurance Association,* addressing an issue of first impression in the state of Texas, an issue that directly impacts this court's jurisdiction.

Defendant TWIA is a quasi-governmental entity created by the Texas Legislature in 1971 to be the windstorm insurer of last resort for Texas' fourteen coastal counties and parts of Harris County. In 2011, the Texas legislature passed House Bill No. 3 ("HB3"), which was signed by Governor Perry on July 19, 2011, and became effective September 28, 2011. HB3 revised Chapter 2210 of the Texas Insurance Code, which governs the operation of TWIA.

Among the many changes to Chapter 2210 is the requirement that an action brought in state court for a denied claim be presided over by a judge appointed by the Multi-District Litigation

Panel. *Tex. Ins. Code, §2210.575(e), attached as Exhibit A.* The statute further requires that the appointed judge be an active judge who is a resident of the county in which the loss occurred or of a first-tier coastal county (such as Galveston County) or a second tier coastal county adjacent to the county in which the loss occurred. *Id*. While the judge of this court meets the latter requirement, he does not meet the former requirement as he was not appointed by the MDL panel.

In *Pruski*, a Motion for Summary was granted in favor of TWIA, dismissing the suit. Plaintiff appealed to the 13th Court of Appeals on several grounds, one of which was that the trial court failed to meet the statutory requirements for presiding over the matter. The Court of Appeals noted the significance of the argument:

> Pruski challenges the presiding judge's authority to preside over this TWIA suit because the judge was never appointed by the Judicial Panel on Multidistrict Litigation (MDL Panel) in accordance with § 2210.575(e) of the insurance code. *See* TEX. INS. CODE ANN. § 2210.575(e). This is an issue of first impression and one which requires us to analyze the Texas Windstorm Insurance Association Act (the TWIA Act) to determine whether § 2210.575(e) imposes a judicial exclusivity.

See Opinion, attached as Ex. B., at 3. The Court went on to note that the MDL had not yet had the opportunity to address the assignment of judges in cases against TWIA under the statute. *Id. at 3-4.*

The parties disputed the effect of the presiding judge not being appointed by the MDL panel. Was the error, if it was error, waivable or not? The Court ultimately held that section 2210.575(e) of the Texas Insurance Code is mandatory and requires the MDL Panel to appoint the presiding judge in every case against TWIA, regardless of whether multidistrict litigation is involved. Because the presiding judge in the case was not appointed by the MDL Panel but was assigned in the usual course upon the filing of a new lawsuit, the judge lacked "judicial authority" to preside over the case. The Court concluded that the trial court's ultimate judgment was therefore "void" and not waivable. *Id. at 13.*

The potential impact of this ruling is significant and far-reaching. If it stands, then it could be argued that the opinion effectively nullifies every order in numerous pending cases against TWIA, and it nullifies the judgments in hundreds of other past cases litigated since 2011. It further renders void prospectively any ruling made by any judge not appointed by the MDL panel, including rulings and judgments from this Court. It certainly provides the losing party in the trial of this matter the opportunity to complain after the judgment is entered that such judgment is void. While the effect of the opinion is mandatory in those counties within the 13th Court of Appeals' district, it has precedential value in the other counties as it is the only decision regarding this issue in the state of Texas.

TWIA filed a Motion for En Banc Reconsideration of the 13th Court of Appeals' decision in *Pruski*. *Attached as Exhibit C*. It has been granted and the parties are in the briefing stage. However, a decision is not expected by the time this matter is called for trial during the April docket.

II. MOTION TO ABATE/MOTION FOR CONTINUANCE

Defendant moves for entry of an order abating this matter until there is a final resolution of whether this Court has jurisdiction over this matter. Defendant is concerned that, if the *Pruski* decision is allowed to stand, any judgment arising from a trial will be void, and these parties' and this Court's resources will have been expended for naught.

If this Court is not inclined to abate this matter until an indefinite date, then Defendant requests a continuance of at least six months at which time this issue can be revisited, if necessary.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant Texas Windstorm Insurance Association and Plaintiff William Greer respectfully pray that the Court set this motion for a hearing and after a hearing grant their motion to abate until seven (7) days after *Pruski v. Texas Windstorm Insurance Association* is resolved, or, in the alternative, grant the parties' motion to continue this matter for six (6) months.

Respectfully submitted,

MCLEOD, ALEXANDER, POWEL & APFFEL, P.C.

By: _____

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ATTORNEYS FOR DEFENDANT,
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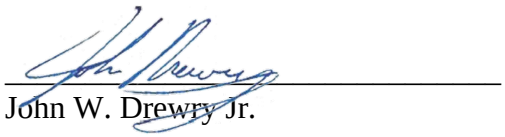
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I certify that I have conferred with opposing counsel on April 28, 2023, and they are in agreement with this motion.



John W. Drewry Jr.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served pursuant to the Texas Rules of Civil Procedure on May 4, 2023, upon counsel of record via e-filing.

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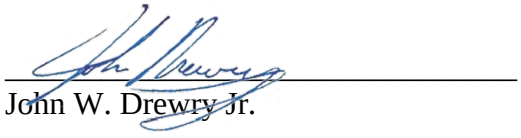

John W. Drewry Jr.

2021 Texas Statutes
Insurance Code
Title 10 - Property and Casualty Insurance
Subtitle G - Pools, Groups, Plans, and Self-Insurance
Chapter 2210 - Texas Windstorm Insurance Association
Subchapter L. -1. Claims: Settlement and Dispute Resolution
Section 2210.575. Disputes Concerning Denied Coverage

Universal Citation: TX Ins Code § 2210.575 (2021)

Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE. (a) If the association denies coverage for a claim in part or in full and the claimant disputes that determination, the claimant, not later than the expiration of the limitations period described by Section 2210.577(a), but after the date the claimant receives the notice described by Section

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2210.573(d)(2) or (3), must provide the association with notice that the claimant intends to bring an action against the association concerning the partial or full denial of the claim.

(b) If a claimant provides notice of intent to bring an action under Subsection (a), the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code. A claimant that does not provide notice of intent to bring an action before the expiration of the period described by Subsection (a) waives the claimant's right to contest the association's partial or full denial of coverage and is barred from bringing an action against the association concerning the denial of coverage.

(c) The association must request alternative dispute resolution of a dispute described by Subsection (b) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.

(d) Alternative dispute resolution under this section must be completed not later than the 60th day after the date a request for alternative dispute resolution is made under Subsection (c). The 60-day period described by this subsection may be extended by the commissioner by rule in accordance with Section 2210.581 or by the association and a claimant by mutual consent.

(e) If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (d) or any extension under that subsection, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. An action brought under this subsection shall be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be an active judge, as defined by Section 74.041, Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred.

(f) If a claimant brings an action against the association concerning a partial or full denial of coverage, the court shall abate the action until the notice of intent to bring an action has been provided and, if requested by the association, the dispute has been submitted to alternative dispute resolution, in accordance with this section.

(g) A moderated settlement conference under this section may be conducted by a panel consisting of one or more impartial third parties.

(h) If the association requests mediation under this section, the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the mediation.

(i) If the association requests mediation under this section, and the claimant and the association are able to agree on a mediator, the mediator is the mediator agreed to by the claimant and the association. If the claimant and the association are unable to agree on a mediator, the commissioner shall select a mediator from a roster of qualified mediators maintained by the department. The department may:

(1) require mediators to register with the department as a condition of being placed on the roster; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting a mediator under this section.

(j) The commissioner shall establish rules to implement this section, including provisions for expediting alternative dispute resolution, facilitating the ability of a claimant to appear with or without counsel, establishing qualifications necessary for mediators to be placed on the roster maintained by the department under Subsection (i), and providing that formal rules of evidence shall not apply to the proceedings.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

EXHIBIT A

NUMBER 13-21-00167-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

STEPHEN PRUSKI, **Appellant,**

v.

TEXAS WINDSTORM INSURANCE ASSOCIATION, **Appellee.**

On appeal from the 117th District Court of Nueces County, Texas.

OPINION

Before Justices Longoria, Silva, and Peña[1]
Opinion by Justice Silva

[1] The Honorable Leticia Hinojosa, former Justice of this Court, did not participate in this decision because her term of office expired on December 31, 2022. In accordance with the appellate rules, she was replaced on panel by Justice Lionel Aron Peña Jr.

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Pro se appellant Stephen Pruski sued appellee Texas Windstorm Insurance Association (TWIA) complaining that appellee "improperly denied portions of [his] claim for damages from Hurricane Harvey." *See* TEX. INS. CODE ANN. §§ 2210.001–.705. TWIA filed a traditional motion for summary judgment, which the trial court granted. By four issues, Pruski argues that the trial court (1) "failed to meet requirements of [the] statute for [a] presiding judge," (2) denied Pruski "reasonable access to all information relevant" to the case, (3) improperly excluded Pruski's "evidentiary filings in opposition to statutory language," and (4) abused its discretion in granting TWIA's motion for summary judgment. We reverse and remand.

I. BACKGROUND

Pruski's condominium was damaged when Hurricane Harvey struck Corpus Christi in August 2017. Pruski's property was insured under a hail and windstorm policy with TWIA, and Pruski filed a claim with TWIA under the policy on August 28, 2017. Following another rainstorm which purportedly caused damage to recently repaired areas, Pruski filed an additional claim with TWIA on December 12, 2017. TWIA issued its notice accepting coverage in part for both claims. However, TWIA declined coverage for the reported damages to the drywall on the perimeter walls and ceilings. Pruski served TWIA with a timely notice of intent to sue and subsequently filed suit, seeking recovery for the damages denied by TWIA. *See id.* § 2210.575(a).

Pruski thereafter filed a motion for traditional summary judgment, which the trial court denied. Pruski then filed a motion for recusal, questioning the judge's impartiality under Texas Rules of Civil Procedure 18b. Pruski's motion additionally cited to

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§ 2210.575(e) of the Texas Insurance Code as the "statute that is the genesis of this motion."[2] *See id.* § 2210.575(e) (setting forth requirements for the appointment of a judge over TWIA Act suits). A judge assigned by the regional administrative judge to consider Pruski's motion denied the motion. *See* TEX. R. CIV. P. 18a(g).

On March 10, 2021, TWIA filed a traditional summary judgment motion, arguing that "[a]s a matter of law, no coverage is owed" because Pruski's "insurance policy only covers personal property and certain personal property that becomes affixed to his condominium"—which does not include drywall composing perimeter walls. The trial court granted TWIA's motion for summary judgment and ordered that Pruski recover nothing from TWIA. This appeal followed.

II. DISCUSSION

By his first issue, which we find dispositive, *see* TEX. R. APP. P. 47.1, Pruski challenges the presiding judge's authority to preside over this TWIA suit because the judge was never appointed by the Judicial Panel on Multidistrict Litigation (MDL Panel) in accordance with § 2210.575(e) of the insurance code. *See* TEX. INS. CODE ANN. § 2210.575(e). This is an issue of first impression and one which requires us to analyze the Texas Windstorm Insurance Association Act (the TWIA Act) to determine whether § 2210.575(e) imposes a judicial exclusivity. *See* TEX. INS. CODE ANN. §§ 2210.001–.705; *see also* TEX. GOV'T CODE ANN. §§ 74.161–.164 (Court Administration Act, Subchapter H, "Judicial Panel on Multidistrict Litigation"); *see generally In re Tex. Windstorm Ins. Ass'n.*

[2] TWIA acknowledges in its brief that "[t]he real substance of Pruski's motion to recuse was that the presiding judge should have been appointed by the Judicial Panel on Multidistrict Litigation ([MDL Panel]), as contemplated in [§ 2210.]575(e) of the TWIA Act." *See* TEX. INS. CODE ANN. § 2210.575(e).

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Harvey Litig., No. 19-0472, at *1 (Tex. Jud. Pan. Mult. Lit. July 10, 2020) (per curiam) (acknowledging that the MDL Panel has not yet had the opportunity to address the assignment of judges in cases against TWIA under § 2210.575(e)).

A. Standard of Review

"As in any statutory interpretation case, our objective is to ascertain and give effect to the Legislature's intent." *Hegar v. Health Care Serv. Corp.*, 652 S.W.3d 39, 43 (Tex. 2022) (quoting *In re D.S.*, 602 S.W.3d 504, 514 (Tex. 2020)) (cleaned up). We review matters requiring statutory interpretation de novo, and we "enforce the plain meaning of statutory text, informed by its context." *Id.*; *City of Fort Worth v. Pridgen*, 653 S.W.3d 176, 183 (Tex. 2022) ("[W]hile we must necessarily construe key terms, we do so in the context of the statute as a whole, not in isolation.").

B. Applicable Law

In passing the TWIA Act, the legislature created a "quasi-governmental body" to "provide an adequate market for windstorm and hail insurance in the seacoast territory of this state." *Hous. & Cmty. Servs., Inc. v. Tex. Windstorm Ins. Ass'n*, 515 S.W.3d 906, n.1, 909 (Tex. App.—Corpus Christi–Edinburg 2017, no pet.) (quoting TEX. INS. CODE ANN. § 2210.001) (cleaned up). TWIA's organization, its operations, and all related matters are governed by Chapter 2210 of the Texas Insurance Code. TEX. INS. CODE ANN. § 2210.001. Under this chapter, an insured seeking to file a claim under a TWIA policy must do so within one year from the date the damage to property occurred. *Id*. § 2210.573(a). Within sixty days of receiving a claim, TWIA must notify the claimant that

it has either accepted coverage for the claim in full, accepted coverage for the claim in part and denied it in part, or denied coverage for the claim in full. *Id.* § 2210.573(d).

Following TWIA's denial of a claim, in whole or in part, the TWIA Act allows for the claimant to pursue litigation against TWIA. *Id.* §§ 2210.571–.582. Section 2210.575, entitled "Disputes Concerning Denied Coverage," sets forth a claimant's notice requirements for bringing suit. *Id.* § 2210.575(a). In actions brought pursuant to the TWIA Act, a claimant is limited to challenging (1) whether TWIA's denial of coverage was proper, and (2) the amount of damages to which the claimant is entitled. *Id.* § 2210.576(a). TWIA may then require the claimant to submit to alternative dispute resolution, and if that is unsuccessful, "the claimant may bring an action against [TWIA] in a district court in the county in which the loss that is the subject of the coverage denial occurred." *Id.* § 2210.575(b), (e).

In 2011, the legislature significantly amended the process for bringing claims against TWIA, adding, in relevant part, subsection (e) in its passage of House Bill 3. *See id.* § 2210.575(e); *see also Tex. Windstorm Ins. Ass'n v. Boys & Girls Club of Coastal Bend, Inc.*, No. 13-19-00429-CV, 2020 WL 6072624, at *2 (Tex. App.—Corpus Christi–Edinburg Sept. 24, 2020, pet. denied) (mem. op.) ("In 2011, the Texas Legislature passed House Bill No. 3, which made significant changes to Chapter 2210, including the addition of restrictions on policyholders' remedies and specific procedural requirements.") (cleaned up). It is language in § 2210.575(e) that the parties dispute the effect and consequence of: "An action brought under this subsection shall be presided over by a

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judge appointed by the [MDL Panel] designated under [§] 74.161, Government Code."[3] TEX. INS. CODE ANN. § 2210.575(e).

The MDL Panel consists of five members designated by the Texas Supreme Court, and all actions by the MDL Panel require a concurrence from three of the five members. TEX. GOV'T CODE ANN. § 74.161(a), (b). The MDL Panel operates in accordance with the rules of practice and procedures adopted by the supreme court. *Id.* § 74.163(a); *see generally* TEX. GOV'T CODE ANN. § 74.021 ("The supreme court has supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice."). One such rule—Rule of Judicial Administration 13—was promulgated by the Texas Supreme Court in 2003, codified, and imposes a judicial exclusivity where applicable. TEX. GOV'T CODE ANN. §§ 74.024, 74.163(b); *see* TEX. R. JUD. ADMIN. 13.1(a), (b)(1); *cf.* TEX. CONST. art. V, § 11 ("[T]he District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law."); TEX. GOV'T CODE ANN. § 74.094(a); TEX. R. CIV. P. 330(h). Rule 13 sets forth the procedures necessary for the MDL Panel "to transfer 'related' cases (i.e.[,] cases involving common questions of fact) from different trial courts to a single pretrial judge." *In re Deepwater Horizon Incident Litig.*, 387 S.W.3d 127, 128

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[3] Section 2210.575(e) further requires as follows:

> A judge appointed under this section must be an active judge, as defined by [§] 74.041, Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred.

Id. The TWIA Act defines first and second tier counties, and Nueces County is identified as a first tier county. *See id.* § 2210.003(4), (11).

(Tex. Jud. Pan. Mult. Lit. 2011). MDL Panel intervention under Rule 13 is predicated on the submission of a written motion addressed to the MDL Panel by a party or judge. TEX. R. JUD. ADMIN. 13.3. Provided that the motion adequately resolves every Rule 13-enumerated threshold, the MDL Panel will grant the request for transfer, and a judicial assignment will follow. *Id.* R. 13.6(a). The judge assigned by the MDL Panel "has exclusive jurisdiction" over the cause "unless a case is retransferred by the MDL Panel or is finally resolved or remanded to the trial court for trial." *Id.*; *see In re Farmers Ins. Co. Wind/Hail Storm Litig. 2*, 506 S.W.3d 803, 804 (Tex. Jud. Pan. Mult. Lit. 2016).

C. Analysis

The parties agree that this is a suit brought under the TWIA Act and that the MDL Panel did not appoint a judge in this case. *See* TEX. INS. CODE ANN. § 2210.575. Rather, the parties principally disagree with the import and effect of the language found in § 2210.575(e). TWIA urges this Court to conclude that however mandatory the language in § 2210.575(e) appears, it is still susceptible to waiver principles and not otherwise restrictive of a trial court's authority to preside over a § 2210.575 suit. *See generally Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131–32 (Tex. 2018) (exploring provisions containing mandatory terms which do not carry a mandatory prescription); *see, e.g.*, *Tex. Dep't of Pub. Safety v. Scanio*, 159 S.W.3d 712, 714 (Tex. App.—Corpus Christi–Edinburg 2004, pet. denied) (concluding a statute requiring that "the county judge *shall* transfer the case to a district court for the county on the motion of either party or of the judge" was a question of venue, and thus, waivable).

The first indication that § 2210.575(e) imposes an obligation is its use of "shall"—mandatory language: "An action brought under this subsection *shall* be presided over by a judge appointed by the [MDL Panel] designated under [§] 74.161, Government Code." TEX. INS. CODE ANN. § 2210.575(e) (emphasis added); *see Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1320 (2020); *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 392 (Tex. 2014) ("The Code Construction Act makes clear that the use of 'shall' normally imposes a mandatory requirement." (citing TEX. GOV'T CODE ANN. § 311.016(2))); *see also Shall*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "shall" as "a duty to"). Additionally, where—as here—a statute "distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty." *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016); *compare* TEX. INS. CODE ANN. § 2210.575(b) ("[T]he association *may* require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference.") (emphasis added), *with id.* § 2210.575(c) ("The association *must* request alternative dispute resolution of a dispute described by Subsection (b) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.") (emphasis added). We further find persuasive that we have long held that statutory provisions pertaining to the creation of statutory causes of action and remedies against an administrative agency, such as TWIA, are mandatory and exclusive. *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909.

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In our determination of whether to depart from the ubiquitous meaning of "shall"—specifically, to decide whether the Legislature's use of "shall" constituted a conferment of exclusive judicial authority—we are confronted with a glaring omission in the statute: Section 2210.575 contains no guidance regarding the procedure necessary to initiate MDL Panel assignment. *See generally* TEX. INS. CODE ANN. § 2210.575 (setting forth a claimant's notice requirements, establishing TWIA's right to seek alternative dispute resolution, and requiring a court to abate "an action against [TWIA] . . . until the notice of intent to bring an action has been provided and, if requested by the association, the dispute has been submitted to alternative dispute resolution, in accordance with this section"). In contrast to Rule 13.3 proceedings, which places the onus on a party or court to request MDL Panel-intervention *before* appointment is considered and ordered, § 2210.575 contains no such triggering provision. *Compare* TEX. R. JUD. ADMIN. 13.3 *with* TEX. INS. CODE ANN. § 2210.575(e). Section 2210.575(e) simply appears to necessitate—without instruction as to how it is to be effectuated or by whom—that the MDL Panel must appoint a judge in TWIA Act filings. *See* TEX. INS. CODE ANN. § 2210.575(e); *In re Tex. Windstorm Ins. Ass'n. Harvey Litig.*, No. 19-0472, at *1 (concluding that a "plain reading" of § 2210.575 requires that the MDL Panel appoint a judge in TWIA Act proceedings and explicitly "forecloses the assignment" of judges otherwise authorized to preside under Rule 13.6(a)). It is in partial consideration of this statutory silence that TWIA advances its interpretation of the provision as one akin to a venue challenge—i.e., waived if not timely asserted and otherwise unobstructive on a court's authority to preside over a cause or render judgment.

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For reasons explored *infra*, it would be in contravention to the statute's objectives and legislative history for us to conclude that § 2210.575(e) does not carry a mandatory prescription. The legislature has broad authority to restrict a courts' jurisdictional purview, and legislative limitations to a trial court's judicial authority "need not be express." *S.C. v. M.B.*, 650 S.W.3d 428, 436 (Tex. 2022); *see, e.g.*, *In re Champion Indus. Sales, LLC*, 398 S.W.3d 812, 820–21 (Tex. App.—Corpus Christi–Edinburg 2012, orig. proceeding) (concluding, in an application of Rule 13.6 on a non-TWIA Act proceeding, that "although the 333rd District Court is a court of general jurisdiction by virtue of the statutes that created it, when the 333rd District Court is acting pursuant to the MDL panel's designation as a pretrial court under MDL rules and legislation, by reference to those rules, it is not a court of general jurisdiction"). Moreover, the presumption that courts of general jurisdiction have subject matter jurisdiction over a matter, unless a showing can be made to the contrary, "does not apply to actions grounded in statute rather than the common law." *In re Champion Indus. Sales*, 398 S.W.3d at 820. It is against this backdrop, that we analyze the history and purpose of § 2210.575. *See S.C.*, 650 S.W.3d at 436; *see also Hegar*, 652 S.W.3d at 43; *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909.

In 2008, in the aftermath of Hurricanes Dolly and Ike, TWIA received over 100,000 claims and experienced an estimated $2.9 billion in losses. TEX. WINDSTORM INS. ASS'N, *Bi-Monthly Interim Report November/December 2012* (January 31, 2013), https://www.twia.org/wp-content/uploads/2015/03/Report-Card-Jan-31-2013-Final.pdf. A review of the Texas House Journal from the tenth day of the 82nd Legislature, First-Called Session reveals remarks by various state representatives concerning TWIA's claims

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handling process and the resulting substantial litigation costs which ultimately led to TWIA being placed under administrative oversight and the passage of House Bill 3 in 2011:

> SMITHEE: . . . . [T]here is several things that are intended to ensure a consistency of result for policy holders, whether they have a lawyer, or don't have a lawyer, or who their lawyer might be.
>
> . . . .
>
> L TAYLOR: We're changing the process with this bill so that people can get their claims handled more quickly and fairly. At the end of the day, our coastal policyholders will be much better taken care of than they were under Hurricane Ike—more efficient, quicker. We're going to save all TWIA policyholders from unnecessary premium increases. . . .
>
> . . . .
>
> MARTINEZ FISCHER: . . . . it's also fair to say that some of the underhandedness that was taking place at TWIA was at the result of discovery and the civil litigation process that brought this information to light . . . .

H.J. of Tex., 82nd Leg., 1st R.S. 500, 503, 505 (2011) (remarks by Representatives John T. Smithee, Larry Taylor, and Trey Martinez Fisher).

Specifically, House Bill 3 "developed a new claims process for TWIA, including limitations on when claim issues may be brought to suit and the extent of damages that may be awarded in any lawsuit against TWIA." TEX. WINDSTORM INS. ASS'N, Bi-Annual Report to the 84th Legislature, at 20 (December 30, 2014), https://www.twia.org/wp-content/uploads/2015/03/TWIA_Biennial_Report_84th_Texas_Legislature.pdf. House Bill 3 additionally limited the remedies available to the insured, making the Deceptive

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Trades and Practices Act and insurance code chapters 541 (bad faith) and 542 (prompt pay act) inapplicable to TWIA claims. TEX. WINDSTORM INS. ASS'N, *TWIA Annual Report Card* (May 31, 2013), https://www.twia.org/wp-content/uploads/2015/03/Report-Card-Jan-31-2013-Final.pdf; *see* Michael S. Wilson, *A Procedure for Segregating Damages from Wind and Flood Water*, 16 TEX. TECH ADMIN. L.J. 141, 174 (2014) ("House Bill 3 significantly limited the ability to bring lawsuits against TWIA . . . .").

Given the expressed legislative intentions behind the 2011 TWIA Act amendments—namely, the implementation of greater restrictions on TWIA Act litigation and imposition of procedures ensuring more uniformity in claims resolutions—it stands to reason that the legislature intended to limit judicial authority in TWIA Act suits in its specific inclusion of § 2210.575(e). *See S.C.*, 650 S.W.3d at 436; *see also Hegar*, 652 S.W.3d at 43; *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909. To conclude otherwise would render the addition of § 2210.575(e) superfluous. *Cf. Off. of the Att'y Gen. of Tex. v. C.W.H.*, 531 S.W.3d 178, 183 (Tex. 2017) (concluding, where a statute required automatic case referral to a specialized associate judge, "[w]e assume that the Legislature believed that the efficiencies" of those specialized associate judges "outweigh[ed] any burden that appearing first before [such] associate judge may create in any particular case"). We therefore conclude § 2210.575(e) denotes mandatory action inconsistent with discretion. *See* TEX. INS. CODE ANN. § 2210.575; *cf. S.C.*, 650 S.W.3d at 436; *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909. Because nothing in § 2210.575 requires Pruski to have explicitly requested that the MDL Panel appoint a judge to initiate

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the statute's assignment requirement, we reject TWIA's contention that Pruski's failure to timely file a request for appointment constituted a waiver of his complaint.

Having concluded such provision is mandatory and restrictive of a judge's authority to preside over TWIA Act suits, we must also conclude the presiding judge was without authority to render judgment in this cause. *See generally Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 74–75 (Tex. 2000) ("A judgment may properly be rendered against a party only if the court has authority to adjudicate the type of controversy involved in the action.") (cleaned up). The judgment is therefore void. *See In re D.S.*, 602 S.W.3d at 512 ("A judgment is void, rather than voidable, when it is apparent that the court rendering judgment had no jurisdiction over the parties or property, no jurisdiction over the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.") (cleaned up); *cf. Comm'n for Law. Discipline v. Schaefer*, 364 S.W.3d 831, 836 (Tex. 2012) (per curiam) ("[J]udgments of disqualified trial judges are void."). We sustain Pruski's first issue.

III. CONCLUSION

We reverse the trial court's judgment and remand with instructions to vacate and set aside the judgment and to conduct further proceedings consistent with this opinion. *See* TEX. R. APP. P. 43.2(d); *see, e.g.*, *San Patricio County v. Nueces County*, 492 S.W.3d 476, 488 (Tex. App.—Corpus Christi–Edinburg 2016, pet. denied) (reversing "the judgment of the trial court rendered on the merits of the case" and remanding "with instructions to vacate and set aside that judgment and to transfer the case" to the appropriate county).

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CLARISSA SILVA
Justice

Delivered and filed on the
23rd day of February, 2023.

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No. 13-21-00167-CV

IN THE THIRTEENTH COURT OF APPEALS

STEPHEN PRUSKI,

Appellant,

vs.

TEXAS WINDSTORM INSURANCE ASSOCIATION,

Appellee.

Appeal from the 117th District Court of
Nueces County, Texas, Cause No. 2020DCV-2256-B

APPELLEE'S MOTION FOR EN BANC RECONSIDERATION

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REQUEST FOR EN BANC RECONSIDERATION

Appellee Texas Windstorm Insurance Association ("TWIA") files this Motion for En Banc Reconsideration and respectfully shows the following:

I. Introduction

This is an appeal of an ordinary summary judgment in an insurance coverage action against TWIA. But the ruling issued in this case is anything but ordinary. On February 23, 2023, a panel of this Court consisting of Justices Silva, Longoria, and Peña (the "Panel") issued an Opinion that effectively invalidates every judgment and ruling in nearly every case involving TWIA since September 28, 2011. The Panel held that section 2210.575(e) of the Texas Insurance Code requires the judicial panel on multidistrict litigation ("MDL Panel") to appoint the presiding judge in every case against TWIA, regardless of whether multidistrict litigation is involved, and that because the presiding judge in this case was not appointed by the MDL Panel but was assigned in the usual course upon the filing of a new lawsuit (the same as in every case that has been filed against TWIA since September 2011), the judge lacked "judicial authority" to preside over the case and the court's ultimate judgment is therefore "void." Op. at 13 (attached).

The Panel's ruling is extraordinary because it nullifies orders issued in numerous pending cases against TWIA in this district, and it nullifies the judgments in numerous other past cases litigated since 2011. In many of those

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cases, the Panel's ruling will give one or both parties the ability avoid any prior rulings and get a "do-over" because the court's actions are all null and void. And the Panel's ruling is contrary to well-established law in Texas, including authority from this Court, holding that the error, if any, in the manner of appointing the presiding judge renders the judgment voidable at most. This Court should reconsider this case en banc to align this Court's decisions and prevent the uncertainty and confusion that will follow from the Panel's Opinion.

II. Background

TWIA is the state-created insurer of last resort in Texas for hail and windstorm damage to property in coastal counties. TEX. INS. CODE § 2210.001. Claims against TWIA are controlled by Chapter 2210 of the Texas Insurance Code (the "TWIA Act"). *See id.*, Subchapter L-1. Under the TWIA Act, most disputes over the amount of a claimed loss must be resolved exclusively through binding appraisal, while disputes over coverage of a loss may be resolved through litigation, subject to limitations, after certain statutory prerequisites are met. *See id.* §§ 2210.574-.576.

Under the provision of the TWIA Act limiting litigation against TWIA to disputes over coverage, which the Legislature adopted in 2011,[1] such lawsuits must be filed "in a district court in the county in which the loss that is the subject of the

[1] Act of July 19, 2011, 82nd Leg., 1st C.S., 2011 Tex. Sess. Law Serv. 1st Called Sess. Ch. 2 (H.B. 3).

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coverage denial occurred." *Id.* § 2210.575(e). The provision further states that the case "shall be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code." *Id.* (hereinafter the "MDL-appointment" provision). And that judge must be "an active judge, as defined by Section 74.041, Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred." *Id.*

The MDL-appointment provision went into effect on September 28, 2011, and has never been invoked, either by a claimant or by TWIA. During the intervening twelve years, hundreds of legal actions have been filed and litigated to conclusion under the TWIA Act, but no one has ever petitioned the MDL Panel to appoint the trial judge. Indeed, in a 2020 order transferring some 242 Hurricane Harvey-related cases filed in ten different counties to an MDL pretrial court, the MDL Panel noted that it "has never been called on to apply Section 2210.575(e) of the Texas Insurance Code." *See In re Tex. Windstorm Ins. Ass'n Harvey Litig.*, MDL No. 19-0472, slip op. at 2 (Tex. MDL July 10, 2020) (per curiam).[2] The

[2] For the Hurricane Harvey MDL, the MDL Panel appointed a judge to preside over pretrial proceedings but did not appoint any judge to preside over the trials of any of those cases. At present, the Hurricane Harvey MDL is the only instance where the MDL Panel has appointed a judge for a case against TWIA.

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presiding judges have always been assigned in the normal course for the district where the lawsuit was filed.

This case is the same. Plaintiff-Appellant Stephen Pruski ("Pruski") filed suit against TWIA in Nueces County on June 22, 2020, complaining that TWIA did not pay for some water damage to his condominium in Port Aransas. CR 1. The case was assigned to the 117th District Court, Hon. Sandra Watts presiding, and despite knowing of the MDL-appointment provision, Pruski did not object and filed a motion for summary judgment, asking Judge Watts to decide the merits of the case in his favor. CR 577.[3] Judge Watts denied Pruski's motion and later granted summary judgment for TWIA. CR 924, 1382.

After Pruski's summary judgment strategy failed, he moved to recuse Judge Watts, claiming she was biased and unqualified. CR 1048. Pruski's arguments did not suggest any bias or lack of qualification; it was based on the simple fact that Judge Watts was not appointed by the MDL Panel. CR 1049-50. Judge Watts was the presiding judge in the proper district, and she was qualified for appointment under the criteria outlined in section 2210.575(e), but she had not been appointed by the MDL Panel. Judge Watts declined to recuse, referred Pruski's recusal

[3] Three days after filing his Original Petition in this case, Pruski emailed the district clerk's office to inquire about appointment of the presiding judge, noting the provision in section 2210.575(e) of the Texas Insurance Code saying the judge must be appointed by the MDL Panel. CR 1054. The clerk's office simply responded that the case would be "electronically assigned to a District Judge." *Id.*

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motion to the regional administrative judge, and the regional administrative judge (Hon. Carlos Valdez) denied it. CR 1083, 1084.

On appeal of the final summary judgment, Pruski argued, among other things, that Judge Watts was not "qualified" to preside over this case because she was not appointed by the MDL Panel. Pruski Br. at 17-19. TWIA argued in response that Judge Watts was qualified under the law, and under the criteria in section 2210.575(e), and that Pruski waived any complaint that Judge Watts was not appointed by the MDL Panel by failing to request that the MDL Panel appoint a different judge and failing to object to Judge Watts deciding the case until after she denied his motion for summary judgment. TWIA Br. at 8-12.

In a full Opinion, the Panel held that the trial court's final summary judgment is "void" because Judge Watts was not appointed by the MDL Panel. Op. at 13. Irrespective of whether the 117th District Court had jurisdiction over the parties and subject-matter, and of whether Judge Watts was qualified to preside in that court, the Panel held that Judge Watts lacked "judicial authority" to preside over the case because the cause of action is statutory, and under mandatory language in the statute, the presiding judge must be appointed by the MDL Panel. *Id.* at 10-12. And Pruski could not waive the requirement because it was akin to a lack of subject-matter jurisdiction, and nothing in the statute required him to request that the MDL Panel appoint the presiding judge. *Id.* at 12-13.

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III. The Panel's Opinion is contrary to clearly established law.

The Panel's holding that the trial court's judgment is void is contrary to established Texas law. Under Texas law, there are two ways a judgment could be rendered void. First, a judgment may be void "when it is apparent that the court rendering the judgment had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court." *Mapco, Inc. v. Forrest,* 795 S.W.2d 700, 703 (Tex. 1990). Second, a judgment may be void if the presiding judge was not qualified to serve as a judge or was constitutionally or statutorily disqualified from serving as a judge in the case. *Tesco Am., Inc. v. Strong Indus., Inc.*, 221 S.W.3d 550, 555 (Tex. 2006); *Wilson v. State*, 977 S.W.2d 379, 380 (Tex. Crim. App. 1998); *Davis v. State*, 956 S.W.2d 555, 559 (Tex. Crim. App. 1997). Absent one of these circumstances, errors of law or procedure only render the judgment *voidable* and subject to possible reversal on appeal—not void. *Davis*, 956 S.W.2d at 559; *Mapco*, 795 S.W.2d at 703.

None of these circumstances are present here. The court below—the 117th District Court of Nueces County, a court of general jurisdiction—had jurisdiction over the subject matter and the parties; the presiding judge—Hon. Sandra Watts—was the duly elected and sworn judge presiding in that court; and there is no evidence or allegation that Judge Watts was constitutionally or statutorily

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disqualified. Therefore, under controlling Texas law, the judgment could not be "void," as the Panel held.

A. The trial court had jurisdiction.

As noted above, there has been no showing that the 117th District Court of Nueces County somehow lacked jurisdiction over the subject matter of this case, lacked jurisdiction over the parties, or lacked the capacity to act as a court. In fact, under the TWIA Act, Pruski was *required* to file his case in the district court of Nueces County because the property in question is in Nueces County. *See* TEX. INS. CODE § 2210.575(e) (suit must be filed "in a district court in the county in which the loss that is the subject of the coverage denial occurred").

To find that the judgment here is "void," the Panel suggests that the Legislature intended to limit the district court's jurisdiction. *See* Op. at 10-12. The Panel cited legislative history on the 2011 amendments to the TWIA Act (the amendments that added section 2210.575(e)), which indicates that the Legislature intended to limit litigation against TWIA and encourage more uniform claims handling. *Id.* These points are accurate, but it is unclear how they support the conclusion that the Legislature intended for the MDL-appointment provision to limit the district court's jurisdiction. There is simply nothing in the statute or the legislative history to support that conclusion.

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The cases cited by the Panel also do not support that conclusion. The principal case the Panel relied upon was *S.C. v. M.B.*, 650 S.W.3d 428 (Tex. 2022). *See* Op. at 10, 12. In *S.C.*, the Texas Supreme Court considered whether a provision in the Texas Family Code creating a statutory right of action for dividing marital property after a divorce decree has become final was exclusive and displaced similar remedies available for partitioning property under the Texas Property Code. 650 S.W.3d at 434. One of the parties argued that the Family Code remedy was exclusive and conferred exclusive jurisdiction on the original divorce court over such matters, while the other argued that the Family Code provision merely provided an alternative remedy to traditional partition under the Property Code. *Id.* at 435.

In *rejecting* the argument that the Family Code provision was exclusive and jurisdictional, the Texas Supreme Court stated:

> The legislature has broad authority to displace existing remedies and to restrict district courts' subject-matter jurisdiction. Such limitations need not be express, but **"[w]e resist classifying a provision as jurisdictional absent clear legislative intent to that effect.**" *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391 (Tex. 2014). **Absent a compelling showing to the contrary, we presume that remedies remain intact and that the jurisdiction of a district court—our state's sole court of general jurisdiction—remains undisturbed.** *See, e.g.*, Tex. Const. art. V, § 8; *In re Oncor Elec. Delivery Co.*, 630 S.W.3d 40, 44 (Tex. 2021). As the U.S. Supreme Court recently put it, "[w]here multiple plausible interpretations exist—only one of which is jurisdictional—it is difficult to make the case that the jurisdictional reading is clear." *Boechler, P.C. v. Comm'r*, --- U.S. ---, 142 S. Ct. 1493, 1498, 212

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> L.Ed.2d 524 (2022). **Even a reading that is "better is not enough. To satisfy the clear-statement rule, the jurisdictional condition must be just that: clear."** *Id.* at 1499.

Id. at 436 (bold emphasis added). Because the statute did not expressly provide that the Family Code remedy was exclusive, or that the divorce court shall have exclusive jurisdiction, and the overall legal context did not clearly and necessarily imply that the Legislature intended to create a jurisdictional limitation, the Texas Supreme Court held it was not. *Id.* at 437-52.

The key holding in *S.C.* is that a statutory provision will not be read to create a jurisdictional limitation, even if that is a reasonable interpretation of the statute, unless it is *clearly* what the Legislature intended. But the Panel Opinion glosses over the language highlighted above and finds merely that it "stands to reason" that the Legislature would intend to create a jurisdictional limitation with the MDL-appointment provision, *without finding any clear evidence of such an intent*. *See* Op. at 10-13. That is not a faithful application of Texas law.

The Panel also cites *In re Champion Indus. Sales, LLC*, 398 S.W.3d 812 (Tex. App.—Corpus Christi-Edinburg 2012, orig. proceeding) to suggest that because claims against TWIA are controlled by statute, any requirement or limitation in the statute is jurisdictional. *See* Op. at 10. This Court directly rejected that notion in *Tex. Windstorm Ins. Ass'n v. Park*, No. 13-18-00634-CV, 2019 WL 1831771 (Tex. App.—Corpus Christi-Edinburg Apr. 25, 2019, no pet.) (mem.

op.)—a case applying the same version of the TWIA Act at issue here. In *Park*, TWIA argued that the trial court lacked jurisdiction over the plaintiff's claims against it because the TWIA Act's remedies are "exclusive," and the TWIA Act prohibits litigation of claims where TWIA accepted coverage. *Id.* at *1, 6. This Court rejected TWIA's jurisdictional argument because the statute "do[es] not state that a trial court lacks subject matter jurisdiction over a claim raised against TWIA outside of the purview of the statute, nor do[es it] imply that a trial court lacks subject matter jurisdiction over a claim properly raised under the statute but deficient on the merits." *Id.* at *6. The statutory limitation of liability, this Court held, "concerns only immunity from liability, which does not implicate subject matter jurisdiction." *Id.* If an exclusive remedies provision that calls for an extra-judicial process and remedy does not implicate subject matter jurisdiction in the absence of express language, it logically follows that neither does the MDL-appointment provision.

Champion Indus. also does not support the Panel's holding. In *Champion Indus.*, a silica-claims MDL pretrial court remanded a wrongful death case to its originating court after it was determined that the decedent did not die from silicosis and the plaintiff nonsuited all of her claims complaining of silica exposure with prejudice. 398 S.W.3d at 816-17. The defendants sought a writ of mandamus to require the MDL court to set aside its remand order, arguing in part that the MDL

court still had jurisdiction and should retain the case because it was a district court with general jurisdiction. *Id.* at 818. This Court disagreed, noting that the MDL procedure was specially created by the Legislature to manage the pretrial process in related cases involving common questions of fact, and that once the silica-related claims were dropped, the case was no longer subject to the MDL court's special jurisdiction. *Id.* at 818-21. The Court explained that "although the 333rd District Court is a court of general jurisdiction by virtue of the statutes that created it, when the 333rd District Court is acting pursuant to the MDL panel's designation as a pretrial court under MDL rules and legislation, by reference to those rules, it is not a court of general jurisdiction." *Id.* at 821.

The Panel Opinion suggests, based on language in *Champion Indus.*, that the 117th District Court was not a court of general jurisdiction here because Pruski's claim against TWIA is statutory. *See* Op. at 10 (emphasizing that district courts are not presumed to have jurisdiction over claims "grounded in statute rather than common law"). That is unsupported. First, no Texas court has ever held that district courts cease to be courts of general jurisdiction when a statutory cause of action is asserted, and that is all that is involved here: Pruski filed a lawsuit against TWIA in the 117th District Court asserting a statutory claim against TWIA. CR 1.

Second, while the Legislature, in creating a statutory cause of action, has the power to prescribe which courts have jurisdiction and to limit their jurisdiction, no

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such limitation is involved here. *Park*, 2019 WL 1831771, at *6. In fact, the statute *required* Pruski to file his case in a district court in Nueces County because that is where the insured property is located. *See* TEX. INS. CODE § 2210.575(e) (suit must be filed "in a district court in the county in which the loss that is the subject of the coverage denial occurred"). Thus, while a statute creating a cause of action can impose jurisdictional limitations, there is no such limitation here.

In sum, the Panel's holding that the district court's judgment is *void* cannot be sustained on the grounds that the court lacked jurisdiction or authority to act as a court. The 117th District Court is a court of general jurisdiction, was the proper court to hear the case, and had jurisdiction over the parties and the subject matter.

B. The presiding judge was qualified.

The Panel's holding also cannot stand on the grounds that Judge Watts was unqualified or disqualified from presiding over this case. Nothing in the statute indicates that a judge is not *qualified* if he or she is not appointed by the MDL Panel. *See* TEX. INS. CODE § 2210.575(e). While the statute prescribes certain criteria a judge must meet in order to be appointed by the MDL Panel—*i.e.*, the judge must be "a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred"—Judge Watts met those qualifications because she was a resident of the county in which the loss

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occurred. *See id.*; *see also* TEX. CONST. art. V, § 7 (district judges must reside in their districts).[4]

No evidence supports the conclusion that Judge Watts was not qualified or was disqualified. But the Panel Opinion overlooks this and concludes that Judge Watts lacked "judicial authority," and that her judgment is therefore "void," because she was not appointed by the MDL Panel. *See* Op. at 10-13. In other words, because the judge was not properly appointed in accordance with applicable state law and procedure, the judge lacked authority and her rulings are void. *See id.* This reasoning is invalid, as both the Texas Court of Criminal Appeals and another panel of this Court have specifically rejected it.

In *Davis v. State*, the Court of Criminal Appeals held that "if a judge is qualified and not constitutionally or statutorily disqualified, his actions are not void due to procedural irregularities in the manner in which the case came before that individual." 956 S.W.2d at 559. In *Wilson v. State* and in *Miller v. State*, the Court of Criminal Appeals held that a judgment signed by a judge who was not properly appointed is not void and cannot be challenged for the first time on appeal. *Wilson*, 977 S.W.2d at 380; *Miller v. State*, 866 S.W.2d 243, 245-46 (Tex. Crim. App. 1993). And, in *Lopez v. State*, this Court held the same, affirming a judgment

[4] Pruski's loss occurred in Port Aransas, Nueces County, and Judge Watts was the presiding judge of the 117th District Court of Nueces County.

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entered by a judge who was never properly appointed because the appellant failed to timely object in the trial court, and the lack of a proper assignment order was not a fundamental error. 57 S.W.3d 625, 629 (Tex. App.—Corpus Christi-Edinburg 2001, pet. ref'd). The Panel's Opinion here contradicts these authorities.

In sum, under established Texas law, no valid basis exists for holding that the district court's judgment is "void." The 117th District Court was the proper court to hear this case; the court had jurisdiction over the subject and the parties; the judge was qualified; and nothing in the record shows that she was somehow unqualified or disqualified. Any error in the manner or procedure by which the presiding judge was assigned is not a fundamental error and, at most, constitutes a procedural error that can be waived for purposes of appeal. *Davis*, 956 S.W.2d at 559-60. The Panel's holding to the contrary is out of step with Texas law.

IV. En banc review is warranted.

En banc review of this case is warranted because the Panel's Opinion conflicts with prior decisions of this Court. TEX. R. APP. P. 41.2(c). First, the Panel suggested that a statutory requirement in the TWIA Act (MDL appointment of the presiding judge) is a jurisdictional limitation on the district court's authority. Op. at 10-13. But, in *Tex. Windstorm Ins. Ass'n v. Park*, another panel of this Court held that statutory prohibitions against litigation under the TWIA Act are *not*

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jurisdictional. 2019 WL 1831771, at *6. These two opinions are fundamentally inconsistent.

Second, the Panel held that a qualified judge who was not appointed in accordance with a provision in the TWIA Act had no judicial authority to hear the case and her judgment is void, and the error could not be waived for purposes of appeal. Op. at 12-13. But, in *Lopez v. State*, another panel of this Court held the opposite: that an appellant could *not* complain on appeal that the presiding judge was not properly appointed when he failed to preserve error in the trial court by timely objecting to the assigned judge. 57 S.W.3d at 629. In one case, the complaint had to be preserved for appeal or it was waived, but in the other, the same type of error could not be waived and rendered the judgment void. Again, the two opinions are fundamentally inconsistent.

En banc review is also warranted because the circumstances are extraordinary and require en banc consideration. TEX. R. APP. P. 41.2(c). First, the Panel's published Opinion not only conflicts with this Court's own prior decisions but also conflicts with several opinions of higher courts in Texas, including *S.C. v. M.B.*, *Tesco Am., Inc. v. Strong Indus., Inc.*, *Wilson v. State*, *Davis v. State*, *Miller v. State*, and *Mapco, Inc. v. Forrest*. The Panel's Opinion is inconsistent with all of these authorities, and en banc review should be granted to align this Court's precedent with prevailing Texas law.

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Second, the adverse effects of the Panel's ruling could be far-reaching. The Panel held that no judge has authority to preside over a case involving TWIA unless that judge was appointed by the MDL Panel, and any rulings or judgments issued by any other judge are void. Op. at 12-13. The statute on which the Panel's holding is based went into effect on September 28, 2011. Since then, over six hundred cases have been litigated under the statute, and several appeals have been decided,[5] and in none of them was the trial judge appointed by the MDL Panel. The trial judge in each case was simply assigned in the usual course. Under the Panel's Opinion, every ruling and judgment in those cases is now null and void and may be subject to collateral attack.

Moreover, dozens of other TWIA cases are currently pending, and those cases have been thrown into disarray by the Panel's Opinion. Because the presiding judges in those cases (with the exception of the Hurricane Harvey MDL pretrial judge) were not appointed by the MDL Panel but were assigned in the usual course, the courts' judicial authority in all of those cases is now in doubt, and

[5] *See Sankey v. Tex. Windstorm Ins. Ass'n*, No. 13-21-00297-CV, 2022 WL 1178963 (Tex. App.—Corpus Christi-Edinburg Apr. 21, 2022, no pet.) (mem. op.); *Valstay, LLC v. Tex. Windstorm Ins. Ass'n*, No. 13-19-00379-CV, 2021 WL 2371759 (Tex. App.—Corpus Christi-Edinburg June 10, 2021, pet. denied) (mem. op.); *Tex. Windstorm Ins. Ass'n v. Boys & Girls Club of the Coastal Bend, Inc.*, No. 13-19-00429-CV, 2020 WL 6072624 (Tex. App.—Corpus Christi-Edinburg Sept. 24, 2020, pet. denied) (mem. op.); *Tex. Windstorm Ins. Ass'n v. Park*, No. 13-18-00634-CV, 2019 WL 1831771 (Tex. App.—Corpus Christi-Edinburg Apr. 25, 2019, no pet.) (mem. op.); *In re Tex. Windstorm Ins. Ass'n*, No. 09-18-00446-CV, 2019 WL 1387107 (Tex. App.—Beaumont Mar. 28, 2019, orig. proceeding) (mem. op.); *Hous. & Cmty. Servs., Inc. v. Tex. Windstorm Ins. Ass'n*, 515 S.W.3d 906 (Tex. App.—Corpus Christi-Edinburg 2017, no pet.); *Tex. Windstorm Ins. Ass'n v. Jones*, 512 S.W.3d 545 (Tex. App.—Houston [1st Dist.] 2016, no pet.).

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all prior rulings in those cases—at least in this district—are now void. Those cases may have to be dismissed for lack of jurisdiction or stayed pending further review by this Court en banc or by the Texas Supreme Court. This disruption of both settled and pending litigation will sow confusion in lower courts and cause delays. These extraordinary circumstances warrant en banc review. TEX. R. APP. P. 41.2(c).

V. Conclusion.

Appellee requests that the Court grant en banc review, set aside the Panel's February 23, 2023 Opinion, reconsider the issues raised in this appeal, and affirm the trial court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

This brief complies with the type-volume limitation of Tex. R. App. P. 9.4(i)(2) because it contains 4,310 words, excluding the parts of the brief that are excepted by Tex. R. App. P. 9.4(i)(1).

/s/ J. Stephen Barrick

CERTIFICATE OF SERVICE

I certify that on March 10, 2023, a copy of this document was served upon the following via electronic service:

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Appendix

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NUMBER 13-21-00167-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

STEPHEN PRUSKI, **Appellant,**

v.

TEXAS WINDSTORM INSURANCE ASSOCIATION, **Appellee.**

On appeal from the 117th District Court of Nueces County, Texas.

OPINION

Before Justices Longoria, Silva, and Peña[1]
Opinion by Justice Silva

[1] The Honorable Leticia Hinojosa, former Justice of this Court, did not participate in this decision because her term of office expired on December 31, 2022. In accordance with the appellate rules, she was replaced on panel by Justice Lionel Aron Peña Jr.

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Pro se appellant Stephen Pruski sued appellee Texas Windstorm Insurance Association (TWIA) complaining that appellee "improperly denied portions of [his] claim for damages from Hurricane Harvey." *See* TEX. INS. CODE ANN. §§ 2210.001–.705. TWIA filed a traditional motion for summary judgment, which the trial court granted. By four issues, Pruski argues that the trial court (1) "failed to meet requirements of [the] statute for [a] presiding judge," (2) denied Pruski "reasonable access to all information relevant" to the case, (3) improperly excluded Pruski's "evidentiary filings in opposition to statutory language," and (4) abused its discretion in granting TWIA's motion for summary judgment. We reverse and remand.

I. BACKGROUND

Pruski's condominium was damaged when Hurricane Harvey struck Corpus Christi in August 2017. Pruski's property was insured under a hail and windstorm policy with TWIA, and Pruski filed a claim with TWIA under the policy on August 28, 2017. Following another rainstorm which purportedly caused damage to recently repaired areas, Pruski filed an additional claim with TWIA on December 12, 2017. TWIA issued its notice accepting coverage in part for both claims. However, TWIA declined coverage for the reported damages to the drywall on the perimeter walls and ceilings. Pruski served TWIA with a timely notice of intent to sue and subsequently filed suit, seeking recovery for the damages denied by TWIA. *See id.* § 2210.575(a).

Pruski thereafter filed a motion for traditional summary judgment, which the trial court denied. Pruski then filed a motion for recusal, questioning the judge's impartiality under Texas Rules of Civil Procedure 18b. Pruski's motion additionally cited to

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§ 2210.575(e) of the Texas Insurance Code as the "statute that is the genesis of this motion."[2] *See id.* § 2210.575(e) (setting forth requirements for the appointment of a judge over TWIA Act suits). A judge assigned by the regional administrative judge to consider Pruski's motion denied the motion. *See* TEX. R. CIV. P. 18a(g).

On March 10, 2021, TWIA filed a traditional summary judgment motion, arguing that "[a]s a matter of law, no coverage is owed" because Pruski's "insurance policy only covers personal property and certain personal property that becomes affixed to his condominium"—which does not include drywall composing perimeter walls. The trial court granted TWIA's motion for summary judgment and ordered that Pruski recover nothing from TWIA. This appeal followed.

II. DISCUSSION

By his first issue, which we find dispositive, *see* TEX. R. APP. P. 47.1, Pruski challenges the presiding judge's authority to preside over this TWIA suit because the judge was never appointed by the Judicial Panel on Multidistrict Litigation (MDL Panel) in accordance with § 2210.575(e) of the insurance code. *See* TEX. INS. CODE ANN. § 2210.575(e). This is an issue of first impression and one which requires us to analyze the Texas Windstorm Insurance Association Act (the TWIA Act) to determine whether § 2210.575(e) imposes a judicial exclusivity. *See* TEX. INS. CODE ANN. §§ 2210.001–.705; *see also* TEX. GOV'T CODE ANN. §§ 74.161–.164 (Court Administration Act, Subchapter H, "Judicial Panel on Multidistrict Litigation"); *see generally In re Tex. Windstorm Ins. Ass'n.*

[2] TWIA acknowledges in its brief that "[t]he real substance of Pruski's motion to recuse was that the presiding judge should have been appointed by the Judicial Panel on Multidistrict Litigation ([MDL Panel]), as contemplated in [§ 2210.]575(e) of the TWIA Act." *See* TEX. INS. CODE ANN. § 2210.575(e).

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Harvey Litig., No. 19-0472, at *1 (Tex. Jud. Pan. Mult. Lit. July 10, 2020) (per curiam) (acknowledging that the MDL Panel has not yet had the opportunity to address the assignment of judges in cases against TWIA under § 2210.575(e)).

A. Standard of Review

"As in any statutory interpretation case, our objective is to ascertain and give effect to the Legislature's intent." *Hegar v. Health Care Serv. Corp.*, 652 S.W.3d 39, 43 (Tex. 2022) (quoting *In re D.S.*, 602 S.W.3d 504, 514 (Tex. 2020)) (cleaned up). We review matters requiring statutory interpretation de novo, and we "enforce the plain meaning of statutory text, informed by its context." *Id.*; *City of Fort Worth v. Pridgen*, 653 S.W.3d 176, 183 (Tex. 2022) ("[W]hile we must necessarily construe key terms, we do so in the context of the statute as a whole, not in isolation.").

B. Applicable Law

In passing the TWIA Act, the legislature created a "quasi-governmental body" to "provide an adequate market for windstorm and hail insurance in the seacoast territory of this state." *Hous. & Cmty. Servs., Inc. v. Tex. Windstorm Ins. Ass'n*, 515 S.W.3d 906, n.1, 909 (Tex. App.—Corpus Christi–Edinburg 2017, no pet.) (quoting TEX. INS. CODE ANN. § 2210.001) (cleaned up). TWIA's organization, its operations, and all related matters are governed by Chapter 2210 of the Texas Insurance Code. TEX. INS. CODE ANN. § 2210.001. Under this chapter, an insured seeking to file a claim under a TWIA policy must do so within one year from the date the damage to property occurred. *Id*. § 2210.573(a). Within sixty days of receiving a claim, TWIA must notify the claimant that

it has either accepted coverage for the claim in full, accepted coverage for the claim in part and denied it in part, or denied coverage for the claim in full. *Id.* § 2210.573(d).

Following TWIA's denial of a claim, in whole or in part, the TWIA Act allows for the claimant to pursue litigation against TWIA. *Id.* §§ 2210.571–.582. Section 2210.575, entitled "Disputes Concerning Denied Coverage," sets forth a claimant's notice requirements for bringing suit. *Id.* § 2210.575(a). In actions brought pursuant to the TWIA Act, a claimant is limited to challenging (1) whether TWIA's denial of coverage was proper, and (2) the amount of damages to which the claimant is entitled. *Id.* § 2210.576(a). TWIA may then require the claimant to submit to alternative dispute resolution, and if that is unsuccessful, "the claimant may bring an action against [TWIA] in a district court in the county in which the loss that is the subject of the coverage denial occurred." *Id.* § 2210.575(b), (e).

In 2011, the legislature significantly amended the process for bringing claims against TWIA, adding, in relevant part, subsection (e) in its passage of House Bill 3. *See id.* § 2210.575(e); *see also Tex. Windstorm Ins. Ass'n v. Boys & Girls Club of Coastal Bend, Inc.*, No. 13-19-00429-CV, 2020 WL 6072624, at *2 (Tex. App.—Corpus Christi–Edinburg Sept. 24, 2020, pet. denied) (mem. op.) ("In 2011, the Texas Legislature passed House Bill No. 3, which made significant changes to Chapter 2210, including the addition of restrictions on policyholders' remedies and specific procedural requirements.") (cleaned up). It is language in § 2210.575(e) that the parties dispute the effect and consequence of: "An action brought under this subsection shall be presided over by a

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judge appointed by the [MDL Panel] designated under [§] 74.161, Government Code."[3] TEX. INS. CODE ANN. § 2210.575(e).

The MDL Panel consists of five members designated by the Texas Supreme Court, and all actions by the MDL Panel require a concurrence from three of the five members. TEX. GOV'T CODE ANN. § 74.161(a), (b). The MDL Panel operates in accordance with the rules of practice and procedures adopted by the supreme court. *Id.* § 74.163(a); *see generally* TEX. GOV'T CODE ANN. § 74.021 ("The supreme court has supervisory and administrative control over the judicial branch and is responsible for the orderly and efficient administration of justice."). One such rule—Rule of Judicial Administration 13—was promulgated by the Texas Supreme Court in 2003, codified, and imposes a judicial exclusivity where applicable. TEX. GOV'T CODE ANN. §§ 74.024, 74.163(b); *see* TEX. R. JUD. ADMIN. 13.1(a), (b)(1); *cf.* TEX. CONST. art. V, § 11 ("[T]he District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law."); TEX. GOV'T CODE ANN. § 74.094(a); TEX. R. CIV. P. 330(h). Rule 13 sets forth the procedures necessary for the MDL Panel "to transfer 'related' cases (i.e.[,] cases involving common questions of fact) from different trial courts to a single pretrial judge." *In re Deepwater Horizon Incident Litig.*, 387 S.W.3d 127, 128

[3] Section 2210.575(e) further requires as follows:

> A judge appointed under this section must be an active judge, as defined by [§] 74.041, Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred.

Id. The TWIA Act defines first and second tier counties, and Nueces County is identified as a first tier county. *See id.* § 2210.003(4), (11).

(Tex. Jud. Pan. Mult. Lit. 2011). MDL Panel intervention under Rule 13 is predicated on the submission of a written motion addressed to the MDL Panel by a party or judge. TEX. R. JUD. ADMIN. 13.3. Provided that the motion adequately resolves every Rule 13-enumerated threshold, the MDL Panel will grant the request for transfer, and a judicial assignment will follow. *Id.* R. 13.6(a). The judge assigned by the MDL Panel "has exclusive jurisdiction" over the cause "unless a case is retransferred by the MDL Panel or is finally resolved or remanded to the trial court for trial." *Id.*; *see In re Farmers Ins. Co. Wind/Hail Storm Litig. 2*, 506 S.W.3d 803, 804 (Tex. Jud. Pan. Mult. Lit. 2016).

C. Analysis

The parties agree that this is a suit brought under the TWIA Act and that the MDL Panel did not appoint a judge in this case. *See* TEX. INS. CODE ANN. § 2210.575. Rather, the parties principally disagree with the import and effect of the language found in § 2210.575(e). TWIA urges this Court to conclude that however mandatory the language in § 2210.575(e) appears, it is still susceptible to waiver principles and not otherwise restrictive of a trial court's authority to preside over a § 2210.575 suit. *See generally Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131–32 (Tex. 2018) (exploring provisions containing mandatory terms which do not carry a mandatory prescription); *see, e.g.*, *Tex. Dep't of Pub. Safety v. Scanio*, 159 S.W.3d 712, 714 (Tex. App.—Corpus Christi–Edinburg 2004, pet. denied) (concluding a statute requiring that "the county judge *shall* transfer the case to a district court for the county on the motion of either party or of the judge" was a question of venue, and thus, waivable).

The first indication that § 2210.575(e) imposes an obligation is its use of "shall"—mandatory language: "An action brought under this subsection *shall* be presided over by a judge appointed by the [MDL Panel] designated under [§] 74.161, Government Code." TEX. INS. CODE ANN. § 2210.575(e) (emphasis added); *see Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1320 (2020); *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 392 (Tex. 2014) ("The Code Construction Act makes clear that the use of 'shall' normally imposes a mandatory requirement." (citing TEX. GOV'T CODE ANN. § 311.016(2))); *see also Shall*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "shall" as "a duty to"). Additionally, where—as here—a statute "distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty." *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 172 (2016); *compare* TEX. INS. CODE ANN. § 2210.575(b) ("[T]he association *may* require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference.") (emphasis added), *with id.* § 2210.575(c) ("The association *must* request alternative dispute resolution of a dispute described by Subsection (b) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.") (emphasis added). We further find persuasive that we have long held that statutory provisions pertaining to the creation of statutory causes of action and remedies against an administrative agency, such as TWIA, are mandatory and exclusive. *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909.

In our determination of whether to depart from the ubiquitous meaning of "shall"—specifically, to decide whether the Legislature's use of "shall" constituted a conferment of exclusive judicial authority—we are confronted with a glaring omission in the statute: Section 2210.575 contains no guidance regarding the procedure necessary to initiate MDL Panel assignment. *See generally* TEX. INS. CODE ANN. § 2210.575 (setting forth a claimant's notice requirements, establishing TWIA's right to seek alternative dispute resolution, and requiring a court to abate "an action against [TWIA] . . . until the notice of intent to bring an action has been provided and, if requested by the association, the dispute has been submitted to alternative dispute resolution, in accordance with this section"). In contrast to Rule 13.3 proceedings, which places the onus on a party or court to request MDL Panel-intervention *before* appointment is considered and ordered, § 2210.575 contains no such triggering provision. *Compare* TEX. R. JUD. ADMIN. 13.3 *with* TEX. INS. CODE ANN. § 2210.575(e). Section 2210.575(e) simply appears to necessitate—without instruction as to how it is to be effectuated or by whom—that the MDL Panel must appoint a judge in TWIA Act filings. *See* TEX. INS. CODE ANN. § 2210.575(e); *In re Tex. Windstorm Ins. Ass'n. Harvey Litig.*, No. 19-0472, at *1 (concluding that a "plain reading" of § 2210.575 requires that the MDL Panel appoint a judge in TWIA Act proceedings and explicitly "forecloses the assignment" of judges otherwise authorized to preside under Rule 13.6(a)). It is in partial consideration of this statutory silence that TWIA advances its interpretation of the provision as one akin to a venue challenge—i.e., waived if not timely asserted and otherwise unobstructive on a court's authority to preside over a cause or render judgment.

For reasons explored *infra*, it would be in contravention to the statute's objectives and legislative history for us to conclude that § 2210.575(e) does not carry a mandatory prescription. The legislature has broad authority to restrict a courts' jurisdictional purview, and legislative limitations to a trial court's judicial authority "need not be express." *S.C. v. M.B.*, 650 S.W.3d 428, 436 (Tex. 2022); *see, e.g.*, *In re Champion Indus. Sales, LLC*, 398 S.W.3d 812, 820–21 (Tex. App.—Corpus Christi–Edinburg 2012, orig. proceeding) (concluding, in an application of Rule 13.6 on a non-TWIA Act proceeding, that "although the 333rd District Court is a court of general jurisdiction by virtue of the statutes that created it, when the 333rd District Court is acting pursuant to the MDL panel's designation as a pretrial court under MDL rules and legislation, by reference to those rules, it is not a court of general jurisdiction"). Moreover, the presumption that courts of general jurisdiction have subject matter jurisdiction over a matter, unless a showing can be made to the contrary, "does not apply to actions grounded in statute rather than the common law." *In re Champion Indus. Sales*, 398 S.W.3d at 820. It is against this backdrop, that we analyze the history and purpose of § 2210.575. *See S.C.*, 650 S.W.3d at 436; *see also Hegar*, 652 S.W.3d at 43; *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909.

In 2008, in the aftermath of Hurricanes Dolly and Ike, TWIA received over 100,000 claims and experienced an estimated $2.9 billion in losses. TEX. WINDSTORM INS. ASS'N, *Bi-Monthly Interim Report November/December 2012* (January 31, 2013), https://www.twia.org/wp-content/uploads/2015/03/Report-Card-Jan-31-2013-Final.pdf. A review of the Texas House Journal from the tenth day of the 82nd Legislature, First-Called Session reveals remarks by various state representatives concerning TWIA's claims

handling process and the resulting substantial litigation costs which ultimately led to TWIA being placed under administrative oversight and the passage of House Bill 3 in 2011:

> SMITHEE: . . . . [T]here is several things that are intended to ensure a consistency of result for policy holders, whether they have a lawyer, or don't have a lawyer, or who their lawyer might be.
>
> . . . .
>
> L TAYLOR: We're changing the process with this bill so that people can get their claims handled more quickly and fairly. At the end of the day, our coastal policyholders will be much better taken care of than they were under Hurricane Ike—more efficient, quicker. We're going to save all TWIA policyholders from unnecessary premium increases. . . .
>
> . . . .
>
> MARTINEZ FISCHER: . . . . it's also fair to say that some of the underhandedness that was taking place at TWIA was at the result of discovery and the civil litigation process that brought this information to light . . . .

H.J. of Tex., 82nd Leg., 1st R.S. 500, 503, 505 (2011) (remarks by Representatives John T. Smithee, Larry Taylor, and Trey Martinez Fisher).

Specifically, House Bill 3 "developed a new claims process for TWIA, including limitations on when claim issues may be brought to suit and the extent of damages that may be awarded in any lawsuit against TWIA." TEX. WINDSTORM INS. ASS'N, Bi-Annual Report to the 84th Legislature, at 20 (December 30, 2014), https://www.twia.org/wp-content/uploads/2015/03/TWIA_Biennial_Report_84th_Texas_Legislature.pdf. House Bill 3 additionally limited the remedies available to the insured, making the Deceptive

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Trades and Practices Act and insurance code chapters 541 (bad faith) and 542 (prompt pay act) inapplicable to TWIA claims. TEX. WINDSTORM INS. ASS'N, *TWIA Annual Report Card* (May 31, 2013), https://www.twia.org/wp-content/uploads/2015/03/Report-Card-Jan-31-2013-Final.pdf; *see* Michael S. Wilson, *A Procedure for Segregating Damages from Wind and Flood Water*, 16 TEX. TECH ADMIN. L.J. 141, 174 (2014) ("House Bill 3 significantly limited the ability to bring lawsuits against TWIA . . . .").

Given the expressed legislative intentions behind the 2011 TWIA Act amendments—namely, the implementation of greater restrictions on TWIA Act litigation and imposition of procedures ensuring more uniformity in claims resolutions—it stands to reason that the legislature intended to limit judicial authority in TWIA Act suits in its specific inclusion of § 2210.575(e). *See S.C.*, 650 S.W.3d at 436; *see also Hegar*, 652 S.W.3d at 43; *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909. To conclude otherwise would render the addition of § 2210.575(e) superfluous. *Cf. Off. of the Att'y Gen. of Tex. v. C.W.H.*, 531 S.W.3d 178, 183 (Tex. 2017) (concluding, where a statute required automatic case referral to a specialized associate judge, "[w]e assume that the Legislature believed that the efficiencies" of those specialized associate judges "outweigh[ed] any burden that appearing first before [such] associate judge may create in any particular case"). We therefore conclude § 2210.575(e) denotes mandatory action inconsistent with discretion. *See* TEX. INS. CODE ANN. § 2210.575; *cf. S.C.*, 650 S.W.3d at 436; *Hous. & Cmty. Servs., Inc.*, 515 S.W.3d at 909. Because nothing in § 2210.575 requires Pruski to have explicitly requested that the MDL Panel appoint a judge to initiate

the statute's assignment requirement, we reject TWIA's contention that Pruski's failure to timely file a request for appointment constituted a waiver of his complaint.

Having concluded such provision is mandatory and restrictive of a judge's authority to preside over TWIA Act suits, we must also conclude the presiding judge was without authority to render judgment in this cause. *See generally Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 74–75 (Tex. 2000) ("A judgment may properly be rendered against a party only if the court has authority to adjudicate the type of controversy involved in the action.") (cleaned up). The judgment is therefore void. *See In re D.S.*, 602 S.W.3d at 512 ("A judgment is void, rather than voidable, when it is apparent that the court rendering judgment had no jurisdiction over the parties or property, no jurisdiction over the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.") (cleaned up); *cf. Comm'n for Law. Discipline v. Schaefer*, 364 S.W.3d 831, 836 (Tex. 2012) (per curiam) ("[J]udgments of disqualified trial judges are void."). We sustain Pruski's first issue.

III. CONCLUSION

We reverse the trial court's judgment and remand with instructions to vacate and set aside the judgment and to conduct further proceedings consistent with this opinion. *See* TEX. R. APP. P. 43.2(d); *see, e.g.*, *San Patricio County v. Nueces County*, 492 S.W.3d 476, 488 (Tex. App.—Corpus Christi–Edinburg 2016, pet. denied) (reversing "the judgment of the trial court rendered on the merits of the case" and remanding "with instructions to vacate and set aside that judgment and to transfer the case" to the appropriate county).

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CLARISSA SILVA
Justice

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