

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ROBERT R. GAGNÉ

PLAINTIFF

VERSUS

CIVIL ACTION NO.: 1:06-CV-00711-LTS-RHW

**STATE FARM FIRE AND
CASUALTY COMPANY, and
EXPONENT, INC., ET AL.**

DEFENDANTS

PLAINTIFF'S RESPONSE TO MAGISTRATE'S ORDER NO. 529

Plaintiff sought the following categories of documents in his appeal:

1. The contemporaneous meeting notes taken by the Team Manager (Steve Burke) assigned to Robert Gagné's homeowners (HO) claim that relate to how to typically handle a slab claim. This request is limited to those notes that were taken prior to October 25, 2005 when Mr. Burke was reassigned out of the South Mississippi Catastrophe area and relinquished his role as the Team Manager in charge of the Gagné homeowners claim. Specifically, Plaintiff is aware that notes from meetings conducted on October 4, & 5, 2005 are directly on point and should have been produced as part of State Farm's core discovery.

2. The recently discovered interim/draft/status Exponent engineering reports that were transmitted by Exponent to State Farm, the eventual final report, and any correspondence related to the transmission of the drafts, revision of such drafts, or the rejection of such drafts (i.e., decision to not issue a report altogether) in the possession of State Farm.

Contemporaneous Meeting Notes

Plaintiff requests the Court to direct State Farm Fire & Casualty Co. (hereafter State Farm) to provide:

The notes transcribed by Gagné Team Manager Stephen Burke related to any meetings or

discussions prior to his departure from the South Mississippi CAT assignment on October 25, 2005 that relate to adjusting claims. This should include those notes that relate to the adjusting of slab claims. These should include, his notes from the October 4, 2005 meeting [Marion vs State Farm, 1:06cv969, Exhibit 158, bates nos. 1-215], October 5, 2005 meeting [Id.] , and October 7, 2005 meeting [Id.]. Plaintiff suggests the notes of Stephen Burke are likely not voluminous and that justice would best be served by the Court determining whether such notes have a sufficient nexus with the Gagné claims such that they might be admissible or lead to admissible evidence in the following areas: 1) In the Gagné case-in-chief; 2) As impeachment evidence; and/or 3) as evidence in support of Mr. Gagné's extra-contractual and/or punitive damages claims. Plaintiff respectfully suggests that State Farm not be given discretion to unilaterally determine whether such documents relate to the Gagné claim or slab claims in general.

Steve Burke took contemporaneous notes at meetings which discussed the handling of Katrina claims. These notes were attached as Exhibit 158 (Bates numbered 1-215) in Steve Burke's Deposition in Marion vs State Farm, 1:06cv969. State Farm attached this deposition (without exhibits) to their Motion For Protective Order re: Steve Burke in Gagné v State Farm (Exhibit D, Doc 320-5). State Farm should review Exhibit 158 docs 1-215 of the Burke Deposition in Marion and provide to the court any documents memorializing Steve Burke's notes prior to October 25, 2005. The Court can then review this set of documents and determine if disclosure is appropriate.

Draft/Status/Interim/Non-final Reports

Draft Reports

The Court should direct State Farm to provide every draft/status/interim/non-final report (hereafter draft reports) submitted to them by Exponent. This shall include all engineering reports that were not final reports when they were sent by Exponent to State Farm; all reports that were sent as final reports but ultimately modified in some manner or not issued as final reports.

**Communications/Correspondence Related to the Transmission, Revision,
and/or Rejection of Drafts**

State Farm shall provide every memorialized:

Communication/correspondence related to transmission of the draft reports;

Communication/correspondence related to revision of such draft reports;

Communication/correspondence related to the rejection of such draft reports (i.e., decision to not issue a report altogether)

The Court should direct State Farm to provide the original transmission email or communication which transferred a non-final (draft) report to State Farm from Exponent and all emails/communications related to the report as it worked its way through the process including any emails discussing changes to the wording in the report and any emails communicating with Exponent about the report.

Final Report

State Farm shall provide the final report(s) issued on properties/claims where a draft report issued. Exponent has indicated that there were about ten (10) draft reports were shared with State Farm. State Farm should forward unredacted versions of the final report.

Respectfully submitted this 20th day of January, 2009.

Robert Gagné, Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of January, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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