

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

REGINALD EDWIN BOSSIER

PLAINTIFF

VERSUS

CAUSE NO. 1:08-cv-408-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

MOTION TO COMPEL

COMES NOW the Plaintiff, by and through undersigned counsel, and files this his Motion to Compel against the Defendant and would show unto this Honorable Court the following:

1.

On or about December 2, 2008, Plaintiff propounded his first set of Interrogatories and Requests for Production of Documents to Defendant.

2.

After an extension to answer the discovery was agreed upon by counsel for the parties, Defendant provided its discovery responses on February 17, 2009.

3.

Counsel for Plaintiff sent to counsel for Defendant on March 9, 2009, a detailed letter outlining State Farm's discovery response deficiencies in a good faith effort to resolve same without Court intervention. (See Exhibit "A")

4.

Despite follow-up by counsel for Plaintiff, counsel for Defendant has not responded to the good faith letter to date. Therefore, Plaintiff has been forced to

file this Motion to Compel to ensure adequate time is provided the Court for ruling prior to the close of discovery.

5.

Plaintiff is asking this Court to overrule objections, and to compel State Farm Fire to produce information and documents as follows:

REQUEST NO. 1: Produce any and **all documents** in any manner related to Plaintiff's claims, including but not limited to each claim file(s) for each Hurricane Katrina claim of the Plaintiff, including the original paper file(s), all electronic file(s) in their native format, all continuing investigation file(s) and packet(s), all special investigative unit / special handling unit, or "SIU" or "SHU" files, and all claim files or compilations of materials related to Plaintiff's claim(s) known by any name; and including any and **all documents, correspondence, electronic communications** including e-mail communication, handwritten communication, and other documents and materials in any manner related to **communications** by and between the individuals working in any manner on the Plaintiff's claims arising from Hurricane Katrina; and/or by and between those individuals and their supervisors or other claims personnel, in any manner related to the Plaintiff and/or his Hurricane Katrina claims.

RESPONSE TO REQUEST NO. 1: The Defendant objects to this Request insofar as it is overly broad in its scope, vague in its terms, and unduly burdensome with which to respond. However, without waiving and subject to said objection, the Defendant would refer the Plaintiff to the documents produced in connection with the Defendant's Rule 26 Pre-Discovery Core Disclosures. Additionally, any documents produced along with these Responses may be potentially responsive to this Request. This Response may be supplemented pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

ARGUMENT: State Farm's objections to this request are not sustainable. First, this Request is not overly broad in its scope, vague, nor unduly burdensome. This Request simply seeks documents in any manner related to Plaintiff's claims. Clearly, such documents are discoverable in the context of this

bad faith litigation. State Farm should be ordered to either withdraw its objections and/or produce any and all documents responsive to this Request.

In addition, although State Farm does not assert privilege, Plaintiff notes it has listed several emails on a privilege log. (See Exhibit "B") If those emails involve how or why the decision was made to tender additional benefits or in what amount, they are not privileged. State Farm should produce these emails or submit them to the Court *in camera*. In addition, State Farm should produce missing claims documents requested by Plaintiff on February 23, 2009: the attachments to emails appearing at 0341-HO and 0342-HO as well as the re-evaluation summary referred to in log entry #74 and the "frequency tracking" results referenced to in entry #71 of the claims file as these matters were relied upon by State Farm as a basis for its claims decisions. No response from State Farm has been received with regard to these requests either.

REQUEST NO. 2: Produce any and **all documents, correspondence**, electronic communications including e-mail communication, handwritten communication, and other documents and materials comprising, and/or in any manner related to, **communications** by and between the individuals working in any manner on the Plaintiff's claims arising from Hurricane Katrina; and/or by and between those individuals and their supervisors or other claims personnel, in any manner related to:

- (1) claims handling policies, procedures, guidelines, recommendations and/or directives applicable to claims arising from Hurricane Katrina and/or determination of "wind vs. water" and/or slab claims;
- (2) **communications**, and/or **meetings** between claims personnel, whether claims representatives, team managers, trainers, engineers, or any other personnel related in any manner to the topics identified in sub-part (1), above, for the time period August 24, 2005, through the present.

RESPONSE TO REQUEST NO. 2: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, time, geographic area, and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request to the extent it seeks documents protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. §§3500 *et seq.* Defendant objects to this request because complete search and response would be unduly burdensome and expensive.

Subject to and without waiving the foregoing, Defendant will make the Wind/Water Claim Handling Protocol and relevant non-privileged Operations Guides illustrative of claim handling guidelines, applicable to homeowner's property damage claims arising out of Hurricane Katrina in Mississippi, available for inspection and copying at the office of Defendant's counsel.

ARGUMENT: State Farm's broad objection is without merit. Initially Plaintiff would disagree that such materials would be confidential or constitute trade secrets. Nonetheless, Plaintiff had made some attempts at agreeing on a protective order and asked that Defendant's counsel contact her with regard to this so that they could agree on the language for same. State Farm also objects on the basis of work product and attorney/client privilege but failed to provide a privilege log identifying the documents allegedly subject to these privileges in a manner sufficient to enable Plaintiff to challenge their designation. State Farm's counsel states that Defendant will make the Wind/Water Claim Handling Protocol and relevant non-privileged Operations Guides available for inspection and

copying at his office. Plaintiff's counsel asked that same be provided to her, but no response or documents have been forthcoming.

REQUEST NO. 3: Produce any and all emails and documents identified through utilization of each of the following search terms, by running a search through each of State Farm's electronic databases (including those utilized to communicate with engineers or third party contractors, and those used to communicate internally and externally with claims personnel and/or management):

- (1) claim number(s) for Mr. Bossier's State Farm homeowners' claim;
- (2) name "Bossier";
- (3) policy number(s) for Mr. Bossier's State Farm homeowners policy(s);
- (4) any other identifier used to identify Mr. Bossier, his policy(s) or his claim(s);
- (5) claim number(s) for the State Farm homeowners' claim(s) of each of the State Farm insureds located within ½ mile of the Bossier home located at 1987 Bayside Drive, Biloxi;
- (6) last name of each of the State Farm insureds located within ½ mile of the Bossier home;
- (7) policy number(s) for the State Farm homeowners policy(s) of each of the State Farm insureds located within ½ mile of the Bossier home;
- (8) any other identifier used to identify each of the State Farm insureds located within ½ mile of the Bossier home, their policy(s) or their claim(s);

RESPONSE TO REQUEST NO. 3: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, time, geographic area, and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information regarding claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to

this request to the extent it seeks documents protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. §§ 3500 *et seq.* Defendant objects to this request because complete search and response would be unduly burdensome and expensive.

Subject to and without waiving the foregoing, see the non-privileged portion of the claim file for the claim made the basis of this suit and related e-mails which pertain to the Plaintiff's claim.

ARGUMENT: State Farm's objections to this request are not sustainable. First, this Request is not overly broad in its subject matter, scope, nor unduly burdensome. This Request simply seeks documents in any manner related to Plaintiff's claims. Clearly, such documents are discoverable in the context of this bad faith litigation. State Farm should either withdraw its objections and/or produce any and all documents responsive to this Request.

In addition, although State Farm does not assert privilege, Plaintiff notes it has listed several emails on a privilege log. If those emails involve how or why the decision was made to tender additional benefits or in what amount, they are not privileged. State Farm should produce these emails or submit them to the Court *in camera*. Moreover, this Honorable Court has previously ruled that neighboring property claims documents are discoverable.

REQUEST NO. 4: Produce any and all emails and the **documents** generated during the time period August 24, 2005 through January, 2007 identified through utilization of each of the following search terms, by running a search through each of State Farm's electronic databases (including those utilized to communicate with engineers or third party contractors, and those used to

communicate internally and externally with claims personnel and/or management):

- (1) “anti-concurrent”
- (2) “concurrent”
- (3) “hurricane damage”
- (4) “distinguishable wind damage”
- (5) “discernible wind damage”
- (6) “damage to separate portions of property”
- (7) “was it wind, or was it water”
- (8) “wind vs. water”
- (9) “slab”
- (10) “slick slab”
- (11) “popsicle stick”
- (12) “burden”
- (13) “benefit of doubt”
- (14) “2005-6” and
- (15) “2006-2”

RESPONSE TO REQUEST NO. 4: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, time, geographic area, and because it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, Statute 44 U.S.C. §§ 3500 *et seq.* Defendant objects to this request because it seeks information regarding claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this request to the extent it seeks documents protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request because complete search and response would be unduly burdensome and expensive.

Subject to and without waiving said objections, please see Response to Request Number 3.

ARGUMENT: State Farm’s failure to produce any documents responsive to this request is without merit. It has failed to establish undue

burden, (see argument relating to Response No. 10, *infra*), and its attempt to invoke privacy rights of others is not well taken since the discovery can be provided in a manner that will protect any such rights.

REQUEST NO. 5: For each seminar, **meeting**, continuing education event, new education event, think tank, strategy meeting, planning meeting, agency meeting, adjuster meeting, executive meeting, board meeting, claims meeting, and **meetings** of any description pertaining to how hurricane claims should be handled, how Hurricane Katrina claims should be handled, how NFIP claims should be handled, and how wind vs. water claims should be handled, which were attended by any of the claims personnel involved in Plaintiff's claim in a direct or supervisory capacity, please produce any and all agendas, minutes, reports, emails, notes, letters, handouts, memoranda, correspondence, and **documents** of any sort whatsoever, paper and/or electronic, produced or generated in advance thereof, in connection therewith, and as a result thereof, also including the notes taken by each individual identified in response to Interrogatory Numbers 2 and 7 during each such meeting.

RESPONSE TO REQUEST NO. 5: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, time, and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it is vague and ambiguous by, among other things, its request for information about "meetings" as this request could encompass any communication among or between State Farm personnel. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request because it seeks information that is protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because complete response would be unduly burdensome and expensive.

Subject to and without waiving the foregoing objections, Defendant states that many hundreds of "meetings" were held on a daily basis following Hurricane Katrina. To the extent there were meetings concerning Plaintiff's claim, Defendant refers Plaintiff to the non-privileged portion of the claim file.

ARGUMENT: Defendant's objections to this Request are not sustainable and its answer is deficient. This Request seeks training materials and/or records of training and meetings, whether in the form of agendas, minutes, reports, e-mails, notes, letters, handouts, memoranda, correspondence and/or other documents that reflect training that was actually presented to claims personnel directly involved with the Plaintiff's claims about how to handle Hurricane Katrina claims, NFIP claims, and/or Wind Versus Water claims. This Request clearly seeks discoverable information in the context of this bad faith insurance lawsuit. Incomplete discovery obtained in other cases has revealed that adjusters were directed to deny claims. (See, e.g., Steve Burke notes). Any documents relating to meetings on Hurricane Katrina claims handling are discoverable. State Farm's unilateral decision to limit its production of responsive documents to documents in the Plaintiff's claim file is not responsive to the scope of this Request, and is not calculated to provide Plaintiff with discoverable information about claims, policies, procedures and training that were administered to the claims personnel actually involved with the Plaintiff's claim about how to handle claims like the Plaintiff's, including the Plaintiff's. Obviously, claims training materials would not have specified the name of any particular insured and would not be contained in the Plaintiff's claim file. State Farm should be ordered to provide all documents and information responsive to this Request.

REQUEST NO. 7: Please produce any and **all documents** and electronically stored information of any type, including but not limited to investigation files, reports, and other documents, which are not part of the

Plaintiff's claim file, but which may be related to the damages caused by Hurricane Katrina in the general vicinity of Plaintiff's home (State Farm insured properties within ½ mile of Plaintiff's home at 1987 Bayside Drive, Biloxi) and/or which may be related to the Plaintiff's claim, including but not limited to: any and all documents that relate to Hurricane Katrina's impact on other homes located in the general vicinity of Plaintiff's home; Statements of persons who were or who purport to be eyewitnesses to the forces of Hurricane Katrina when the hurricane came in contact with homes, trees or other structures in the general vicinity of Plaintiff's home; Engineering "loss causation" reports, and draft reports, of damage done to homes in the general vicinity of Plaintiff's home; and all claim file(s) reports and documents of any type relating to damages, losses and/or the cause of damages or losses to properties located in the general vicinity of Plaintiff's home.

RESPONSE TO REQUEST NO. 7: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, geographic area, and to the extent it has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information contained in the claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. § § 3500 *et seq.* Defendant objects to this request to the extent that it seeks documents protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because complete response would be unduly burdensome and expensive Defendant further objects to this request on the basis that it calls for information not related to the claims or defenses of any party pursuant to the Court's order in *Marion v State Farm Fire and Casualty Company*, Civil Action No I :06CY969, Order Granting in Part Plaintiffs' Motion to Compel [200] and Order Granting in Part Motion for Protective Order [231].

Subject to and without waiving the foregoing objections, and consistent with Judge Walker's Order of March 29, 2007 in *Muller v State Farm Fire & Casualty Company*, Defendant will produce non-privileged portions of homeowner property damage claim files for claims arising out of Hurricane Katrina, within a reasonable distance of Plaintiffs home, which will be redacted to remove personal, private information of insureds, including, but not limited to, their names, social security

numbers, drivers license numbers, financial information, policy information, and other personal information as appropriate.

ARGUMENT: This Request, which seeks claim files, reports, eyewitness statements, engineer investigations and related information regarding the handling of other Hurricane Katrina claims within the general vicinity (State Farm insured properties within ½ mile of Plaintiff's home) clearly seeks discoverable information in the context of this bad faith litigation. The ½ mile radius was defined as an area of discoverable information by this Honorable Court. State Farm states it "will produce non-privileged portions of homeowner property damage claim file for claims arising out of Hurricane Katrina, within a reasonable distance of Plaintiff's home, which will be redacted to remove personal, private information of insureds, including but not limited to, their names, social security numbers, drivers license numbers, financial information, policy information and other personal information as appropriate". Defendant should be ordered to produce such documents immediately. In addition, "policy information" for example, coverage amounts, should not be redacted and should be produced.

REQUEST NO. 8: For each and every individual identified in response to Interrogatory Numbers 2, 7, 8, 10, 11 and 12, and for any other person who was (1) involved in the investigation of Plaintiff's claim, (2) was responsible for supervising the people involved in the investigation of the Plaintiff's claim, (3) was responsible for training, or did train the people involved in the investigation of Plaintiff's claim or the people responsible for supervising the people involved in the investigation of the Plaintiff's claim, produce any and **all documents** and/or compilations of documents, in any form, in any manner relating to training or directives about how to adjust (investigate/handle) Hurricane Katrina claims in Mississippi; including, but not limited to emails and memorandums saved in any

form; and including, but not limited to compact disks (CDs) / (DVDs), floppy disks, and/or removable drives, in any manner or related to said individual's "CAT PL FILE", "CAT PL DISK" and/or "KATRINA FILES", and/or in any manner related to any other compilation of documents, notes, handouts, emails, data and **documents** of any sort, paper and electronic, known by any name, that contain information about State Farm's policies, procedures, recommendation, guidelines, and/or requirements for investigating, adjusting and handling of the Plaintiff's Hurricane Katrina claims, and/or investigating, adjusting and handling Hurricane Katrina claims similar to those of the Plaintiff.

RESPONSE TO REQUEST NO. 8: Defendant objects to this multipart request as it is formulated with subparts requiring separate responses yet listed as one Request for Production. Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence in this litigation. Defendant objects to this request because it is overly broad in scope, subject matter, time, and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it is vague and ambiguous. Defendant objects to this request to the extent that it seeks information that is privileged, proprietary, trade secret, or protected by the Mississippi Trade Secret Act. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. § § 3500 *et seq.* To the extent this request seeks to compel Defendant to produce information related to other insureds, other policies or other claims not at issue herein, Defendant objects that it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing, Defendant reserves the right to supplement this response.

ARGUMENT: The "CAT PL FILES" or other files by any name containing claims, directives, policies and procedures and emails related to the handling of Katrina claims maintained by the individuals actually involved in the handling of Plaintiff's claim are discoverable in the context of this bad faith litigation. Indeed, such a finding has been made by the United States District Court. To the extent State Farm contends materials responsive to this Request are protected due to being privileged, proprietary, or trade secret, any such

objection has been waived by State Farm by its failure to produce a timely privilege log identifying the documents to which these privileges would apply.

State Farm should produce all documents and other responsive information.

REQUEST NO. 9: Produce any and all Training Manuals, slide shows, PowerPoint presentations, and documents by any name utilized for “wind training”, “wind and hail training” and/or “wind or water/wind vs. water training” (including participant, instructor, leader and all other versions), and including each and every version and/or amendment thereof, which were in effect, and which were made available to State Farm personnel investigating and/or adjusting hurricane claims, for the time period January 1, 2004 through the present.

RESPONSE TO REQUEST NO. 9: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request because it is overly broad in time, subject matter, scope, and because it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this request because it is vague and ambiguous. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request because it seeks information that is protected by the attorney/client or work product privileges. Defendant objects to this request because complete search and response would be unduly burdensome and expensive.

ARGUMENT: State Farm’s objections are without merit. The documents relate to issues in this case and should be produced.

REQUEST NO. 10: Please produce any and all engineering reports obtained at the request of State Farm that conclude homes and/or businesses on the Mississippi Gulf Coast were destroyed or significantly damaged (more than 50% of covered value) by Hurricane Katrina’s winds prior to the arrival of storm surge, including all reports identified in response to Interrogatory Numbers 16, 17 and 18.

RESPONSE TO REQUEST NO. 10: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter and

to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information regarding claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request because complete search and response would be unduly burdensome and expensive.

ARGUMENT: State Farm's objection on the grounds of "unduly burdensome and expensive" fails as a matter of law. A party responding to discovery requests on this basis must support the claim by affidavits specifying the expense, hours involved, number of files, people involved, and other information to support the objection. A bare statement by counsel, such as that given in the response to the subject request, is not enough. *Resnick v. American Dental Assoc.*, 90 F.R.D. 530, 542 (N.D. Ill. 1981); *Technograph, Inc. v. Texas Instruments, Inc.*, 43 F.R.D. 416, 419 (S.D. N.Y. 1967). In *Crawley v. American Life Ins. Co.*, 603 So. 2d 835, 841 (Miss. 1992), a defendant's objection to discovery that "it was too burdensome" was found to be unpersuasive. "A trial court should require far more of [Defendant] than this blank assertion before relieving it of furnishing such information." This Request, which seeks engineering reports obtained at the request of State Farm that concluded that homes or businesses on the Mississippi Gulf Coast were destroyed or significantly damaged (more than 50% of covered value) by Hurricane Katrina's winds prior to the arrival of storm surge clearly seeks discoverable information in the context of this bad faith litigation. State Farm has taken the position in 30(b)(6) testimony in other Katrina

cases that it began cancelling engineering reports, and denying claims, because information gathered up to that point from its engineers and other sources allegedly confirmed State Farm's suspicion that the winds of Hurricane Katrina were not significant enough to cause significant structural damage to insured homes; and that most damage was caused by storm surge. Plaintiff's claims specifically include claims that State Farm failed to conduct an adequate investigation in this case - - based in part on State Farm's reliance upon the alleged conclusions of its "experts" in other cases. The requested engineering reports are discoverable. To the extent State Farm contends materials responsive to this Request are protected by the attorney client privilege, work product doctrine, trade secret or proprietary information, any such objection has been waived by State Farm by its failure to produce a timely privilege log identifying the documents to which these privileges allegedly apply. State Farm should be ordered to produce all responsive information.

REQUEST NO. 11: Please produce any and **all documents**, including videos, from eyewitnesses that reported tornados and/or high winds from Hurricane Katrina destroyed or significantly damaged (more than 50% of covered value) homes and/or businesses on the **Mississippi Gulf Coast** prior to the arrival of storm surge, including **all documents** and reports identified in response to Interrogatory Number 17 and 18.

RESPONSE TO REQUEST NO. 11: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information regarding claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy

rights of those insureds. Defendant objects to this request because complete search and response would be unduly burdensome and expensive. Defendant further objects to this request on the basis that it calls for information not related to the claims or defenses of any party pursuant to the Court's order in *Marion v. State Farm Fire and Casualty Company*, Civil Action No 1:06CV969, Order Granting in Part Plaintiffs' Motion to Compel [200] and Order Granting in Part Motion for Protective Order [231].

ARGUMENT: Plaintiff fully incorporates his basis to compel for Request for Production No. 10. The eyewitness statements sought by this Request are discoverable for the same reasons the engineering reports sought in Request No. 10 are discoverable. State Farm should be ordered to produce all responsive information.

REQUEST NO. 17: A certified copy of **your** annual statement and/or financial statement for 2003, 2004, 2005, 2006, and 2007.

RESPONSE TO REQUEST NO. 17: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because the term “financial statement” is vague and ambiguous. Defendant objects to this request because it is overly broad in time and to the extent it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted.

Subject to and without waiving the foregoing, to the extent any of the requested documents are a matter of public record, they are equally available to Plaintiff.

ARGUMENT: To the extent State Farm contends materials responsive to this Request are protected by the trade secret or proprietary information, any such objection has been waived by State Farm by its failure to produce a timely privilege log identifying the documents to which these privileges allegedly apply.

Plaintiff's claims include claims for punitive damages. Thus, information regarding Defendant's income, which would be shown by the annual reports, is discoverable. This information is calculated to lead to the discovery of admissible evidence - evidence which Mississippi Code Annotated 11-1-65 mandates be considered with regard to the issue of punitive damages. State Farm should produce all documents and other responsive information.

REQUEST NO. 18: Any and **all documents** relating to the Purchase Agreement of the Kevin Abraham Katrina video.

RESPONSE TO REQUEST NO. 18: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request to the extent it seeks documents that are confidential. Defendant further objects to this Request insofar as it seeks information which is protected by the attorney-client privilege and/or which constitutes attorney work product.

ARGUMENT: If State Farm intends to use this video in any way, documents should be produced.

REQUEST NO. 19: Any and **all documents** relating to any and all payment(s) made to Kevin Abraham, by **you**, State Farm Mutual, or anyone on **your** behalf, to include cancelled checks, direct deposit(s) information; wire transfers, cash, credit card charges, etc.

RESPONSE TO REQUEST NO. 19: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information that would invade the privacy rights of individuals not parties to this suit.

ARGUMENT: If State Farm intends to use this video in any way, documents should be produced.

REQUEST NO. 20: Any and **all documents** relating to any communications between **you**, State Farm Mutual, and/or State Farm attorneys and Kevin Abraham.

RESPONSE TO REQUEST NO. 20: Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request to the extent it seeks documents that are confidential. Defendant objects to this request to the extent it seeks information that is protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. §§ 3500 *et seq.*

ARGUMENT: If State Farm intends to use this video in any way, documents should be produced.

INTERROGATORIES

INTERROGATORY NO. 3: Were any of the individuals who worked on Plaintiff's claim terminated or taken off catastrophe duty or given adverse job action because of reasons related to Hurricane Katrina? If so, **identify** each such individual, the date on which said termination or other adverse job activity occurred and the reason for same.

ANSWER TO INTERROGATORY NO. 3: Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in subject matter and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information that would invade the privacy rights of persons who are not parties to this litigation.

ARGUMENT: This interrogatory seeks information relevant to Plaintiff's claim. State Farm's objection is without merit.

INTERROGATORY NO. 8: Please describe, in detail, any and all efforts by State Farm to ensure the Plaintiff's claims were adjusted and administered (1) by competent personnel and (2) in a competent and fair manner. Include in, but do not limit your response to a description of any and all reviews, re-inspections, quality control measures, and any other mechanisms used by State Farm to ensure the Plaintiff's claims were adjusted in a fair and competent manner.

ANSWER TO INTERROGATORY NO. 8: To the extent this interrogatory requests information prior to August 29, 2005, Defendant objects on the basis that the same is not relevant to any issue in this suit and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in time, scope, and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it is vague and ambiguous in its reference to the undefined terms "competent" and "fair manner" and in other respects. Defendant objects to this interrogatory to the extent it seeks information that would invade the privacy rights of persons who are not parties to this suit. Defendant objects to this interrogatory because training involves an on-going, day-to-day, on-the-job process and, consequently, it is not possible to respond to this interrogatory with specificity. Defendant objects to this interrogatory because it exceeds the permissible scope of discovery to the extent it requests information about consulting experts that is not discoverable under the rules of procedure regarding testifying experts. Defendant would further object to the information sought as being outside the scope of permissible discovery pursuant to this Court's ruling in *Leonard v. Nationwide* regarding the scope of appropriate discovery. Defendant further objects to this interrogatory on the basis that it calls for information not related to the claims or defenses of any party pursuant to the Court's order in *Marion v. State Farm Fire and Casualty Company*, Civil Action No. 1:06CV969, Order Granting in Part Plaintiffs' Motion to Compel [200] and Order Granting in Part Motion for Protective Order [231].

Subject to and without waiving the foregoing, to the extent this claim required any review, please see the non-privileged portion of the claim file, which speaks for itself. Any and all determinations or decisions made by claims personnel are made in part with reliance on education, training and experience to investigate and make determinations regarding those claims. To the extent this interrogatory seeks to require Defendant to identify every document, data or report that may have been seen by such claims personnel during the course of their

education, training or experience, Defendant objects as the interrogatory is overly broad and unduly burdensome. Defendant handles each claim on its individual merits subject to the policy language, circumstances and facts of that claim. See also the response to Request for Production 2 and the documents being made available in response to same.

ARGUMENT: State Farm's answer is incomplete and inadequate.

Moreover, State Farm refers to "non-privileged portion of the claim file." No portion of such file is privileged nor is any portion listed on a privilege log. Plaintiff is entitled to discover what efforts were undertaken to ensure the claim was properly handled so the jury can determine whether State Farm's conduct was reasonable.

INTERROGATORY NO. 16: Did **you** ignore, destroy and/or hide, and/or direct claims personnel to ignore, destroy and/or hide, any reports (including engineering reports) that demonstrated State Farm insured property on the **Mississippi Gulf Coast** was damaged by winds associated with Hurricane Katrina prior to the arrival of storm surge?

ANSWER TO INTERROGATORY NO. 16: Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory to the extent it implies wrongdoing on behalf of Defendant.

Subject to and without waiving the foregoing, no.

ARGUMENT: State Farm should be ordered to withdraw its objection and answer this Interrogatory. If State Farm caused any such directions or took such action, its policyholders should be entitled to discover same.

INTERROGATORY NO. 17: Did **you** obtain any engineering reports (whether utilized or cancelled by State Farm), including "draft" or first reports, that concluded homes or businesses on the Mississippi Gulf Coast destroyed to

the slab or foundation were destroyed and/or significantly damaged (more than 50% of covered value) prior to the arrival of storm surge?

ANSWER TO INTERROGATORY NO. 17: Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because the phrase “utilized or cancelled by State Farm” is vague and ambiguous. Defendant objects to this interrogatory because it is overly broad in subject matter and to the extent it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information regarding claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this interrogatory because search and response would be unduly burdensome and expensive.

ARGUMENT: The interrogatory is not vague or ambiguous and such information is clearly discoverable. No privacy rights are implicated. Moreover, Plaintiff has agreed to sign a protective order. Defendant should be ordered to answer the interrogatory without objection.

INTERROGATORY NO. 18: For each report responsive to the preceding Interrogatory, please provide the (1) name of the engineer and engineering firm, (2) date of inspection, (3) date of report, and (4) address of property.

ANSWER TO INTERROGATORY NO. 18: Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in subject matter and to the extent it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information regarding claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this interrogatory because search and response would be unduly burdensome and expensive.

ARGUMENT: The interrogatory is not vague or ambiguous and such information is clearly discoverable. No privacy rights are implicated. Moreover,

Plaintiff has agreed to sign a protective order. State Farm should be ordered to answer the interrogatory without objection.

INTERROGATORY NO. 19: Describe the total amount of coverage potentially available as of the date of **your** response to the Plaintiff for his Hurricane Katrina claims under his Homeowner's policy that is the subject of this lawsuit, including a description of how the inflation coverage is calculated, what date is utilized for the "given date" as described in the portion of the policy describing the application of "Inflation Coverage", and identify any and all facts that support that calculation, as well as any and all facts and/or language in the subject policy of insurance, or anywhere else, that **you** contend supports utilization of the referenced date as the "given date" for determining how much inflation coverage is potentially available to the Plaintiff for his as yet unpaid Hurricane Katrina claims.

ANSWER TO INTERROGATORY NO. 19: The total Coverage A (Dwelling) limit was \$341,210.00. The dwelling extension coverage limit was \$59,177.00. The Coverage B (Contents) limit was \$255,90700. The Coverage C (ALE) limit was actual loss incurred.

With respect to inflation coverage, State Farm objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. State Farm objects to this interrogatory because it is overly broad in subject matter, scope, time, geographic area, and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. State Farm objects to this interrogatory to the extent it seeks documents protected by the work product and attorney/client privileges, which are asserted. State Farm objects to this interrogatory to the extent it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Act and these privileges are asserted. State Farm further objects to this interrogatory on the basis that Plaintiff has presented no evidence that his alleged contractual damages would exceed the applicable policy limits, and in fact has presented evidence that his alleged contractual damages are well within the applicable policy limits.

Subject to and without waiving the foregoing, and pursuant to the Court's Order Granting in Part Motion for Protective Order [231] in *Marion v. State Farm*, United States District court for the Southern District of Mississippi, Civil Action No.: 1:06cv969, the total amount of coverage available to the Plaintiff for the alleged loss in question is contained in the previously produced claim file regarding the Plaintiff's claim. The inflation coverage index is used to

automatically increase the limits of liability on dwelling policies. State Farm uses an index of inflation and constructions. Procedures for calculating the inflation index for a particular policy are contained under the section “INFLATION COVERAGE.” The “given date” is the date on which the relevant loss occurred.

ARGUMENT: State Farm’s objections are without merit. Plaintiff contends that the loss exceeds the limits thus placing the inflation factor at issue. State Farm fails to adequately answer the interrogatory. The Court should order Defendant to withdraw its objections and answer same.

INTERROGATORY NO. 20: Identify the source utilized by State Farm to determine the inflation “Index” “on a given date”, as described in the portion of the policy describing the application of “Inflation Coverage”, describe how often said source updates the Inflation Index and how that information is transmitted to and/or acquired by State Farm, and identify any and all language in the subject policy of insurance, or anywhere else, that you contend supports utilization of said source for determining the proper inflation “Index” for determining the amount of inflation coverage available to the Plaintiff.

ANSWER TO INTERROGATORY NO. 20: Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in subject matter, scope, time, geographic location, and to the extent it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted.

ARGUMENT: State Farm’s objections are without merit. Plaintiff contends that the loss exceeds the limits thus placing the inflation factor at issue. State Farm fails to adequately answer the interrogatory. The Court should order the Defendant to withdraw its objections and answer same.

INTERROGATORY NO. 21: Did **you** obtain any eyewitness reports/statements that stated tornados and/or high winds were observed destroying homes, businesses or other structures on the **Mississippi Gulf Coast**

during Hurricane Katrina? If so, as to each report/statement, provide the (1) name and address of eyewitness, (2) location of reported tornado and/or wind event, (3) time and date of reported tornado and/or wind event, and (4) state

whether State Farm obtained a recorded and/or written statement of the eyewitness.

ANSWER TO INTERROGATORY NO. 21: Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in subject matter, scope, time, geographic location, and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information contained in the claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this interrogatory because search and response would be unduly burdensome and expensive.

ARGUMENT: State Farm should be ordered to answer the interrogatory with regard to properties within 1 mile.

6.

Pursuant to Rule 37(a)(4)(A), Plaintiff respectfully requests the Court grant his Motion, require State Farm Fire to respond and produce the requested information within five (5) days, and require the Defendant to pay the Plaintiff, and his counsel, reasonable expenses for having to bring the subject motion before the Court, including reasonable attorneys' fees and costs. Given the comprehensive nature of this motion, Plaintiff requests that the necessity of filing a separate memorandum be waived.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court enter an Order compelling the Defendant to produce, without

protection of any privilege or confidentiality order, any and all documents responsive to specific Requests for Production served by the Plaintiff in the above referenced matter, as set forth above; and ordering the Defendant to pay costs and expenses, including reasonable attorneys' fees, incurred in bringing this Motion before the Court, together with any and all additional relief in favor of the Plaintiff deemed appropriate by the Court.

THIS the 20th day of March, 2009.

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

JUDY M. GUICE (#5057)

Judy M. Guice (MSB #5057)
JUDY M. GUICE, P.A.
P. O. Box 1919
Biloxi, MS 39533-1919
Telephone: (228) 374-9787
Facsimile: (228) 374-9436

CERTIFICATE OF SERVICE

I, Judy M. Guice, counsel for Plaintiff, do hereby certify that I have this day electronically filed the foregoing with the Clerk of this Court using the ECF system which sent notification of such filing to the following:

H. Benjamin Mullen, Esquire
John A. Banahan, Esquire
Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC
P. O. Drawer 1529
Pascagoula, MS 39568

This the 20th day of March, 2009.

s/Judy M. Guice
JUDY M. GUICE (MSB #5057)