

**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

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO COMPEL

COMES NOW the Plaintiff, by and through undersigned counsel, and files this his Supplemental Memorandum in Support of [33] 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.

On March 20, 2009, Plaintiff filed a Motion to Compel [ECF 33] related to outstanding discovery matters.

5.

Since said time, additional discovery has been obtained. Moreover, through deposition testimony, additional deficiencies have been discovered. This supplemental memorandum in support of Motion to Compel updates and supercedes the argument made in the original motion.

6.

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.

State Farm has not produced all claim file documents. For example, although the claim was handled by the State Farm Special Handling Unit (SHU) prior to the filing of suit, which concluded additional payments should be made, no SHU documents or files have been produced. While counsel for Defendant has verbally advised that the SHU had the claims file, said file produced in this case is dated September 10, 2008, after the SHU completed its review. Moreover, it is likely that SHU had additional documents. Whatever files and documents are in the possession of the SHU should be produced in the format existing there. This Honorable Court has previously ruled that SHU documents should be produced. *See, Guice v. State Farm*, Civil Action No. 1:06cv1 LTS-RHW, Exhibit "B" at 107-132.

In addition, although State Farm does not assert privilege in its objection to this Request for Production, Plaintiff notes it has listed several emails on a privilege log. (See Exhibit "C") 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 other missing claims documents that have been requested by Plaintiff including: the “frequency tracking” results referenced to in entry #71 of the claims file and the attachment to the Epiq email appearing at BOSR00000041EM. (See Exhibit “D”), as well as any other documents related to the re-evaluation in which Epiq was involved.¹

In addition, not all documents have been produced relating to Plaintiff’s rental dwelling claim. A recent deposition disclosed that the small payment made there was calculated incorrectly. The file does not contain documents relating to any additional payment that may have been made for depreciation or through the re-evaluation process.

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;

¹The attachments to emails appearing at 0341-HO and 0342-HO and the re-evaluation summary referenced in the original motion have now been produced.

- (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, a protective order has now been entered. 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. Although State Farm has now produced Wind/Water Claim Handling Protocol and some portions of its Operations Guides, other documents relating to the meetings

held on the Mississippi Gulf Coast have not been produced and no valid objection has been made.

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. As noted above, not all such discoverable documents have been produced. 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. While State Farm has produced some claim file documents for some neighbors, it has limited the production to those properties with 0.10 mile of Plaintiff's home as opposed to ½ mile as

requested and as ordered by this Court in other Katrina litigation. There is no reason for such limitation. In addition, the neighboring documents produced are overly redacted and under-inclusive. For example, nearby claims files reflect witnesses were identified who saw homes “exploding” and “blowing up.” State Farm has redacted the names of those witnesses. Since those individuals have discoverable knowledge, their names should be disclosed. In *Gunn v. Lexington*, Civil Action No. 1:07-cv-00478-LTS-RHW, (3/03/08) (ECF # 89), this Honorable Court issued an order requiring the insurer to produce documents for claims within ½ mile of Plaintiff’s property as follows:

1. Copies of any and all checks tendered by Lexington to its insureds for damages sustained to insured properties attributable to wind damages including, but not limited to, damages to insured dwelling, other structures, personal property and additional living expense coverages;
2. Copies of all loss summaries, or the Lexington equivalent, if such documents exist, setting forth with particularity the damages for which Lexington tendered compensation to its insureds;
3. Copies of all engineering reports prepared by or on behalf of Lexington for each such insured property for which payments were made; copies of all photographs of each insured property within each claims file;
4. Copies of all diagrams, if such exist, of each said insured property;
5. Copies of all photographs of each insured property within each claims file; and

6. Copies of all declaration sheets of each insured property which sets forth the coverage limits and deductibles applicable for each coverage type under the policy at issue.

The same order should issue here.

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 team managers were directed to deny claims in State Farm meetings held on the Mississippi Gulf Coast. (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: See above arguments regarding documents relating to Plaintiff's Katrina claims and neighboring claims within ½ mile of Plaintiff's home. With regard to the neighboring claims, Defendant should be compelled to produce all documents referencing eye-witnesses or payments, as well as color copies of the photographs. Payments made after litigation was filed should be compelled subject to the confidentiality order in place. It is misleading to maintain, e.g., that a neighbor received a small payment when he was paid substantial monies in litigation. Moreover, State Farm must produce the detailed list of what damage was paid. It has produced only a broad summary showing, e.g., the total amount paid on structure with no breakdown. The admissibility of such matters will of course be subject to ruling of the trial court.

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. Such documents have not been produced. For example, no emails sent to team manager Tip Pupua have been produced in this case despite counsel

knowing from other litigation that pertinent emails were sent to him on matters such as how to handle a wind claim when there is no flood policy, as is the case here. Such emails do not have to specifically reference Plaintiff's claims to be relevant if they provide guidance on how to handle claims similar to Plaintiff's. 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. For example, we know that in Plaintiff’s neighborhood State Farm obtained one engineering report that documented heavy wind damage in the neighborhood. However, that report, marked “DRAFT”, was ignored and State Farm retained another expert. State Farm maintains it relied on general engineering and weather expert information. Plaintiff is entitled to this discovery to show the investigation was biased and results oriented. 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 set forth above. The eyewitness statements sought by this Request are discoverable for the same reasons the engineering reports sought in Request No. 10 are discoverable. Eye-witnesses in Plaintiff's neighborhood saw homes exploding and being "blown up", but State Farm refuses to identify such individuals. 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, 19 and 20: Counsel for State Farm has now agreed the Kevin Abraham video will not be used for any purpose or relied upon or reviewed by experts. Accordingly, the motion as to those matters is withdrawn.

INTERROGATORIES

INTERROGATORY NO. 1: **Identify** each person known to **you** to have knowledge of any discoverable information, and any information in any manner related to any claim or defense which is the subject of this litigation. (Do not merely refer Plaintiff to the claims file).

ANSWER TO INTERROGATORY NO. 1: Please see the individuals listed in Section 1 of the Defendant's Rule 26 Pre-Discovery Disclosures. Additionally, the following individuals may have discoverable knowledge:

1. Plaintiff
2. Nancy Forbes
Secretary to Mr. Bossier
Address Unknown
3. Sam Larossa
Address Unknown
4. John Compton
Address Unknown
5. Joseph Ziz
Address Unknown

This Answer may be supplemented pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

ARGUMENT: Defendant should be required to provide information regarding eye-witnesses identified in its investigation of Plaintiff's claim and neighboring claims.

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. If the truthful and complete answer is “no,” then it should be so stated without the need to hide behind an objection.

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, a protective order has been entered in this matter. 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, a protective order has been entered in this matter. 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.

7.

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.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court enter an Order compelling the Defendant to produce 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 8th day of May, 2009.

Respectfully submitted,

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

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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 8th day of May, 2009.

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