

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

**REGINALD EDWIN BOSSIER**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 1:08cv408-LTS-RHW**

**STATE FARM FIRE AND  
CASUALTY COMPANY**

**DEFENDANT**

**ORDER**

Before the Court is [33] motion to compel filed by Plaintiff on March 20, 2009. The motion originally challenged State Farm’s objections/responses to fourteen requests for production and eight interrogatories. State Farm agreed to produce some of the items contained in the requests, particularly upon entry of a protective order to maintain confidentiality of sensitive information. *See*, responses to requests for production 1, 2, 3, 7, and 9. A consent protective order [41] was entered in the case on April 7, 2009, and State Farm has subsequently served second and third supplemental disclosures [48 and 51] and supplemental responses to Plaintiff’s requests for production [46 and 53] and interrogatories [49]. Following these supplemental disclosures and responses, Plaintiff filed a supplemental memorandum in support of his motion to compel [54], to address only the matters remaining at issue.<sup>1</sup> Defendant responded to the supplemental memorandum on May 18, 2009 [56] and Plaintiff filed his reply [57] on May 27, 2009. The motion is now ripe for ruling.

In Request No. 1 Plaintiff seeks all documents related to Plaintiff’s claims, including “frequency tracking” results referenced in entry # 71 of the claims file, and the attachment to an

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<sup>1</sup>Plaintiff states the motion is now moot with respect to Defendant’s responses to three of the requests for production (Requests 18, 19 and 20).

Ep iq email identified as BOSR00000041M. Plaintiff's supplemental memorandum adds a request for "special investigative unit/special handling unit (SHU) files or compilations of materials related to Plaintiff's claim(s)." Plaintiff further asserts that the file produced does not contain documents relating to incorrect calculation of a payment made on Plaintiff's rental dwelling claim or those relating to any additional payment made for depreciation or through the reevaluation process. Defendant responds that (1) in connection with its Rule 26 pre-discovery core disclosures it produced copies of Plaintiff's claim file for claims he made following Hurricane Katrina; (2) the "frequency tracking" results can be gleaned from subsequent log entries showing the efforts of Shellie Leverett (the adjustor) to ascertain whether an alleged eyewitness had given State Farm a statement, and to locate the alleged eyewitness, and her inability to find any prior statement;<sup>2</sup> (3) SHU had in its possession only the claim file which has been produced to the Plaintiff, and emails which have been withheld as privileged; (4) Plaintiff has subpoenaed and received the Ep iq documents which are not part of the claim file; and (5) Plaintiff has been provided the complete rental dwelling claim file, and no additional payments were made to Plaintiff due to lack of proper documentation. Plaintiff submits that there are additional discoverable and unproduced documents, Defendant states there are not. Based upon nothing more than the speculation of Plaintiff or argument of counsel, this Court will not order Defendant to produce something Defendant denies exists. The Court will require no further production by Defendant under this request at this time, but will require State Farm to produce to the Court for *in camera* review the emails withheld under claim of privilege.

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<sup>2</sup>Defendant adds that Plaintiff has now deposed Ms. Leverett and received answers regarding this matter, and that there are no associated documents.

In Request No. 2 Plaintiff seeks all documents, correspondence and materials in any way related to communications between individuals working in any manner on the Plaintiff's claims and between those individuals, their supervisors or other claims personnel related to (1) claims handling policies, procedures, directives, *etc.*, and (2) communications and/or meetings between claims personnel related in any manner to such claims handling policies, procedures, directives, *etc.* from August 24, 2005 to present. Defendant states it has produced the operating guides and responsive memoranda, and has produced to Plaintiff the non-privileged communications and claim file documents pertaining to his claim. Defendant objects that the request is overly broad, seeks information which has no bearing on Plaintiff's claim, and that it is virtually impossible to comply with" a request for all documents related to "communications and/or meetings" by and between all claims personnel for the myriad meetings following Hurricane Katrina which related to claims handling to some extent. Because the request, as stated, is extremely broad and extends to matters significantly beyond the Plaintiff's claim in this case, the Court will require no further response to this request.

Request No. 3 seeks production of emails and documents identified by running database searches (1) using Plaintiff's claim numbers, name, or other identifiers, and (2) using the claim numbers, names, policy numbers and other identifiers of all State Farm insureds located within one-half mile of Plaintiff's home. State Farm responds that it has produced claims files for some 23 properties of its insureds located within a 1/10 mile radius of Plaintiff's property.<sup>3</sup> This Court has not adopted a per se ½ mile radius as a presumptively reasonable area within which an

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<sup>3</sup>Plaintiff states in reply that State Farm has produced claims information with respect to only 16 properties of its other insureds.

insurer must produce claims information as to its other insureds. To the extent that State Farm has not produced the claims information for the 23 properties it claims to have produced, it shall do so within five days of the date of this order. Without some basis for finding insufficient the claims information produced for the 23 other insureds' properties, the Court will not require further production in this regard. With respect to challenged redactions in the files, the Court finds, consistent with the ruling in *Marion v. State Farm*, 1:06:cv969-LTS-RHW, Doc. [231], that Plaintiff is entitled to information as to the identity of purported eyewitnesses interviewed as part of the investigation into Plaintiff's claim, or information upon which State Farm relied in adjusting Plaintiff's claim, but he is not entitled to discover eyewitness accounts obtained by State Farm which were not part of the investigation or adjustment of Plaintiff's claim.

Request No. 4 seeks production of any and all emails and documents generated during the time from August 24, 2005 through January 2007 by searching State Farm databases using some 15 listed search terms, including "anti-concurrent," "distinguishable wind damage," "burden," "slab," "wind vs. water," "2005-6," and "benefit of doubt." Defendant objects that the request seeks information not relevant to the issues in this case, that it is overly broad in subject matter, scope, time, geographic area, and seeks information having no bearing on Plaintiff's claim; that it seeks documents protected by attorney-client or work product privilege; and that such a search would be unduly burdensome and expensive. In its supplemental memorandum, Defendant adds that the request for database searches on such broad and common terms could produce thousands of emails unrelated to Plaintiff's claim, and would create unnecessary expense and delay in the case. Relevant discovery should focus on Plaintiff's claim. The Court finds this request overly

broad and not reasonably calculated to lead to discovery of admissible evidence, and will require no further response to it.

Request No. 5 seeks all documents whatsoever (including any notes taken by individuals) produced in connection with all meetings of any description which were attended by any of the supervisory claims personnel involved in Plaintiff's claim pertaining to how hurricane claims (including Katrina claims) should be handled, how NFIP claims should be handled, and how wind vs. water claims should be handled. Defendant objects that the request seeks information irrelevant to the issues in this litigation, is vague and overly broad, and that hundreds of meetings occurred on a daily basis following Hurricane Katrina. Defendant asserts that to the extent any meeting concerned Plaintiff's claim, responsive information is in the claims file previously produced to Plaintiff. In his supplemental memorandum, Plaintiff states this request seeks training materials and/or records of training and meetings with respect to claims personnel directly involved with Plaintiff's claims regarding handling Katrina claims, NFIP claims, etc. In response, Defendant states Plaintiff had no flood insurance policy, hence how Defendant handled NFIP claims has no relevance to Plaintiff's claim, and that Plaintiff now has the operations guides and training materials dealing with Hurricane Katrina claims-handling. The Court will not require further response to this request.

Request No. 7 seeks all documents which are not part of Plaintiff's claim file, but which relate to damages caused by Hurricane Katrina in the general vicinity (within a ½ mile radius) of Plaintiff's home, including statements of purported eyewitnesses. The Court holds its ruling with respect to Request No. 3 adequately addresses this issue, and will require no further production than that stated with respect to Request No. 3.

In his supplemental memorandum, Plaintiff indicates Request No. 8 should have resulted in the production of directives, policies and procedures regarding claims handling, CAT PL files and emails related to the handling of Katrina claims maintained by the individuals actually involved in handling Plaintiff's claim. Although the request as stated did not make it clear that this was what Plaintiff sought, the Court will require State Farm, to the extent that it has not already done so, to produce those documents containing State Farm directives, guidelines, policies and procedures for handling Hurricane Katrina claims in general or Plaintiff's claim specifically. Beyond this, the Court will require no further response to this request.

Plaintiff's Request No. 9 seeks training manuals, PowerPoint presentations, slide shows, etc., used for "wind training," "wind and hail training," and/or "wind or water/wind vs. water training." Without further explanation, Defendant responds that it has "completed the subject production" since entry of the Protective Order. Without any explanation as to what remains lacking, Plaintiff insists he is entitled to an order compelling production. Under these circumstances, the Court has insufficient information to grant the requested relief.

Plaintiff's Requests No. 10 and 11 seek statistical information with respect to all engineering reports State Farm obtained which concluded that homes/businesses on the Mississippi Gulf Coast were destroyed or significantly damaged by Hurricane Katrina's winds before arrival of the storm surge and all documents, including videos, from eyewitnesses that reported tornados or high winds destroying or significantly damaging homes/businesses before the arrival of the storm surge. The information requested does not appear to be reasonably calculated to lead to the discovery of admissible evidence in this case, and the Court will deny the motion to compel as to these requests.

Plaintiff's Request No. 17 seeks State Farm's annual statement and/or financial statement for 2003, 2004, 2005, 2006 and 2007. The Court finds this information is not relevant at this time as Plaintiff has not demonstrated he is entitled to a punitive damages instruction. If punitive damages remain a viable issue by the time of the pre-trial conference for this case, then Defendant shall produce evidence of its current net worth at that time.

Because Plaintiff did not challenge Defendant's response to Interrogatory No. 1 in the motion to compel [33], the Court will not address that interrogatory.

Defendant has sufficiently answered Interrogatory No. 3 and Interrogatory No. 16.

Interrogatory No. 8 requests a detailed description of State Farm's efforts to ensure that Plaintiff's claims were adjusted and administered by competent personnel and in a competent manner, including a description of all reviews, re-inspections, quality control measures, and any other mechanisms to assure a fair and competent adjustment. Plaintiff has been provided copies of his claims file and Defendant's operations guides and training materials dealing with hurricane claims handling, and Defendant has denied that any individuals who worked on Plaintiff's claim were taken off catastrophe duty or given adverse job actions related to Hurricane Katrina. The Court finds this interrogatory overly broad, largely irrelevant and well beyond the scope of discovery, and will not require further response to it.

Plaintiff's motion to compel as to Interrogatories No. 17 and 18 is denied based upon the same reasons as the denial with respect to Plaintiff's Requests for Production 10 and 11, above.

Interrogatory No. 19 and Interrogatory No. 20 seek information regarding total coverage amounts available to Plaintiff, including a description of how inflation coverage is calculated. In response, State Farm stated the amounts of coverage under the policy, directed Plaintiff to

policy procedures for calculating the inflation index and defined the term “given date” as the date on which the loss occurred. The Court will require no further response.

Interrogatory 21 asks whether State Farm obtained any eyewitness reports/statements stating tornados and/or high winds were observed destroying structures in Hurricane Katrina, and requests identities of any such eyewitnesses, the location and time of any such wind event, and whether State Farm obtained a recorded/written statement from such witnesses. Consistent with the Court’s holding as to Request for Production No. 3, the Court finds Plaintiff is entitled only to information as to the identity of purported eyewitnesses interviewed as part of the investigation into Plaintiff’s claim, or information upon which State Farm relied in adjusting Plaintiff’s claim; he is not entitled to discover eyewitness accounts obtained by State Farm which were not part of the investigation or adjustment of Plaintiff’s claim. It is therefore,

**ORDERED**, that [33] the motion to compel is granted in part and denied in part as set forth above.

SO ORDERED, this the 5<sup>th</sup> day of June, 2009.

*/s/ Robert H. Walker*

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ROBERT H. WALKER  
UNITED STATES MAGISTRATE JUDGE