

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

**DANIEL B. O'KEEFE, CELESTE A.  
FOSTER O'KEEFE, and THE DANCEL  
GROUP, INC.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 1:08cv600-HSO-LRA**

**STATE FARM FIRE AND CASUALTY  
COMPANY, and MARSHALL J.  
ELEUTERIUS**

**DEFENDANTS**

**DEFENDANTS' EMERGENCY MOTION TO QUASH PLAINTIFFS'  
EXCESS DISCOVERY REQUESTS**

**COMES NOW**, State Farm Fire and Casualty Company (“State Farm”) and Marshall J. Eleuterius (collectively, “Defendants”), and file their *Emergency Motion to Quash Plaintiffs’ Excess Discovery Requests*, and respectfully state:

**I.  
FACTUAL BACKGROUND**

Plaintiffs filed suit against Defendants in the Circuit Court of Harrison County, Mississippi, First Judicial District on or about August 28, 2006, alleging that State Farm wrongfully denied benefits under various State Farm policies for loss suffered as a result of Hurricane Katrina and further alleging that Eleuterius, among other things, failed to procure proper coverage. In this lawsuit, Plaintiffs claim an entitlement to additional policy benefits as well as extra-contractual damages.

While this case was still in Circuit Court, Plaintiffs served written discovery requests on Defendants. Specifically, Plaintiffs served and State Farm timely responded to 27 individual interrogatories and 20 individual requests for production. Eleuterius timely responded to 16

individual interrogatories and 16 individual requests for production. *See* State Court Discovery, attached as Exhibit “A.”

Subsequently, Plaintiffs responded to State Farm’s discovery requests, alleging that State Farm was heavily involved in the National Flood Insurance Program’s expedited claims handling process and calling into question State Farm’s handling of flood claims. Based upon those allegations, State Farm timely and properly removed the case to this Court. *See* Notice of Removal [1] and Order Denying Remand [33].

On March 4, 2009, United States Magistrate Judge Linda R. Anderson signed a Case Management Order for this cause limiting the total number of interrogatories and requests for production to 30 each. *See* Case Management Order [57]. Thereafter, on May 1, 2009, Plaintiffs served 30 *additional* interrogatories and 28 *additional* requests for production on State Farm, and an *additional* 24 interrogatories and 17 requests for production on Eleuterius. *See* Federal Court discovery attached as Exhibit “B.” Thus, Plaintiffs have served a total of 57 interrogatories and 48 requests for production on State Farm and 40 interrogatories and 33 requests for production on Eleuterius during the prosecution of this dispute. Plaintiffs’ latest written discovery requests propounded on Defendants violate the limits imposed by the Federal Rules of Civil Procedure and this Court’s case management order to the extent they would require Defendants to respond to more than a total of 30 interrogatories and 30 requests for production each.

Moreover, Plaintiffs’ counsel claims that the discovery propounded after removal covers “*virtually the same subject matter as discovery requests served in the State Court proceeding.*” *See* E-mail Correspondences attached as Exhibit “C.” By their own admission, then, at least some of Plaintiffs’ additional discovery requests are cumulative, duplicative and, consequently, wasteful.

State Farm does not and has not opposed reasonable discovery in this case, but instead is acting only to protect against improper, excessive and unnecessary discovery in accordance with the Federal Rules of Civil Procedure, this Court's Case Management Order and recent case law. Defendants should not be made to answer and respond to the additional discovery as currently propounded for the following reasons: (1) the Plaintiffs' recent discovery requests violate the limits and parameters expressly set out in the rules of procedure and the court's case management order; (2) the discovery is cumulative and duplicative of extensive discovery already provided by Defendants; and (3) Plaintiffs have wholly failed to seek leave of court to propound excess discovery.

Defendants have requested Plaintiffs withdraw and re-submit their discovery requests in accordance with this Court's Order limiting discovery requests to 30 interrogatories and 30 requests for production of documents. Ex. C Plaintiffs have refused to do so.<sup>1</sup> Defendants seek to have the discovery sought by Plaintiffs quashed until the Court can rule on this Motion setting forth the *total* number of interrogatories and requests for production Plaintiffs may propound to State Farm and Eleuterius, including those which have already been answered. Defendants have filed this motion as an emergency motion in order to expedite this issue so as to limit any delay in the discovery process.

## **II. THE REQUESTS VIOLATES THE RULES OF DISCOVERY AND THE CASE MANAGEMENT ORDER**

### **A. Plaintiffs' Discovery Requests Exceed The Allowable Limits**

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<sup>1</sup>Defendants contacted Plaintiffs seeking to resolve this matter between the parties. The parties were unable to agree, necessitating this Motion. A good faith certificate is attached, however, because Plaintiffs never gave Defendants permission to sign on their behalf, it is only signed by Defendants. Based on the tenor of the email exchange between the parties, Defendants assume, and have marked, that Plaintiffs oppose this Motion. *See* Good Faith Certificate, attached as Exhibit D; *see also*, Ex. C.

As shown above, the Federal Rules of Civil Procedure and its local counterparts expressly limit the number of interrogatories and requests for production that can be propounded on a party to *thirty succinct questions or requests*. Further, and perhaps more importantly, this Court entered a case management or scheduling order specifically limiting the number of interrogatories and requests for production in this case to 30 each. [57]. Federal Rule of Civil Procedure 16(b) “authorizes the district court to control and expedite pretrial discovery through a scheduling order” and gives the court “broad discretion to preserve the integrity and purpose of the pretrial order.” *Geiserman v. MacDonald*, 893 F.2d 787, 790 (5th Cir. 1990). The excess discovery requests at issue violate the case management order and were served without leave of Court. Therefore, under the inherent authority of this Court to preserve the integrity of its orders, the excess discovery requests should be quashed.

Defendants anticipate opposing counsel will argue that the total number of 30 interrogatories and 30 requests for production is exclusive of the prior written discovery propounded in state court. Plaintiffs will essentially argue that they are entitled to an entire new set of 30 interrogatories, 30 requests for production and 30 requests for admissions. Opposing counsel is simply wrong. In *Maddox v. Heritage Properties, Inc.*, the Northern District of Mississippi addressed this very issue and held that “the limitation applies to all discovery . . . , whether propounded before or after removal from state court.” 2009 WL 1155389, \*2 (N. D. Miss. April 28, 2009) (emphasis added).<sup>2</sup>

In *Maddox*, the plaintiff filed a motion seeking clarification regarding whether “the parties are authorized to propound thirty interrogatories, requests for production and requests for admission over and above discovery requests propounded in state court before th[e] case was

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<sup>2</sup> Defendants also anticipate Plaintiffs will argue that Defendants agreed the 30-request limits were exclusive of the previously-served state court requests. That is also patently incorrect, as evidenced by the correspondence attached as Exhibit C.

removed.” *Id.* The plaintiff had served 17 interrogatories and eight requests for production on the defendants before removal in May 2008. Subsequently, an August 8, 2008, case management order limited the parties to “Interrogatories, Requests for Production, and Requests for Admission to 30 succinct questions.” *Id.* After the case management order was issued, the *Maddox* plaintiff propounded an additional 19 interrogatories as well as additional requests for production and requests for admission. *Id.* The plaintiff did not exceed 30 with regard to requests for production and admissions. However, the Northern District did state the following with regard to the interrogatories:

The total interrogatories, however, number thirty-seven, and therefore exceed the maximum number allowed by the case management order; plaintiffs have not requested leave of court to propound additional interrogatories. Accordingly, the court holds that the parties are limited by the case management order to thirty succinct questions and the limit will not be extended at this late date. *Id.*

The Northern District of Mississippi went on to affirmatively hold that “the parties are limited to the total of thirty interrogatories *inclusive of those propounded before this case was removed to this court.*” *Id.*, (emphasis added).

*Maddox* is virtually identical to the instant case and, like the *Maddox* plaintiff, the plaintiffs here have propounded more than 30 interrogatories and 30 requests for production. In fact, Plaintiffs have propounded a total of 57 interrogatories and 48 requests for production on State Farm as well as a total of 40 interrogatories and 33 requests for production on Eleuterius. This violates both the Court’s Case Management Order and the Federal and Local Rules of Civil Procedure. The fact that some of discovery requests were served in state court is of no consequence. Therefore, Plaintiffs’ discovery requests should be quashed to the extent they exceed a total of 30 succinct requests for production and 30 succinct interrogatories per defendant. Plaintiffs should be required to re-serve their requests to include only an additional 3

interrogatories and 10 requests for production to State Farm and an additional 14 interrogatories and 14 requests for production to Eleuterius.

**B. Conclusion**

The Federal Rule of Civil Procedure 33 limits the number of interrogatories that can be served on a party to 25. Fed. R. Civ. P. 33(a) (“any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts...”). However, a court may alter the limits on the number of interrogatories. Fed. R. Civ. P. 26(b)(2)(A). The Federal Rules of Civil Procedure do not place a limit on the number of requests for production a party may serve on another party. However, the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi do place limitations on discovery and those limitations apply to this case. Specifically, Uniform Local Rule 26.1(D) (2) alters the number of interrogatories and requests for production and imposes a limit of “*thirty succinct questions or requests*” for each. Unif. Local R. 26.1(D) (2) (emphasis added).

Further, a court should not permit discovery if it determines that the discovery will be unreasonably cumulative or duplicative, or if the same information can be obtained from some other source that is more convenient, less burdensome, or less expensive. Fed. R. Civ. P. 26(b)(2)(C)(i). Additionally, a court should not permit discovery if it determines that the burden or expense of the discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake, and the discovery in resolving the issues. Fed. R. Civ. P. 26(b)(2)(C)(iii).

For the reasons set forth herein, State Farm and Eleuterius request that this Court quash the discovery as currently filed by Plaintiffs and limit the total number of additional

interrogatories and requests for production that may be filed by Plaintiffs against these defendants in the remainder of this case consistent with these rules.

**WHEREFORE, PREMISES CONSIDERED,** Defendants respectfully request the Court expedite ruling on this Motion, and quash Plaintiffs' discovery requests to the extent they exceed the limits on discovery imposed by the Case Management Order. In the event this Court denies Defendants motion, Defendants seek thirty (30) days from the entry of this Court's Order denying same in which to respond to Plaintiffs Interrogatories and Requests for Production of Documents. Defendant respectfully request all other relief to which Defendants are justly entitled.

**RESPECTFULLY SUBMITTED,** this 29<sup>th</sup> day of May, 2009.

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**BY: /s/ Paige C. Bush**

**CERTIFICATE OF SERVICE**

I, Paige C. Bush, one of the attorneys for Defendant, State Farm Fire and Casualty Company, do hereby certify that I have this date electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following ECF participant:

**Christopher C. Van Cleave, Esq.  
CORBIN, GUNN 7 VAN CLEAVE, PLLC.  
146 Porter Avenue (39530)  
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Biloxi, Mississippi 39533-1916**

**THIS**, the 29<sup>th</sup> day of May, 2009.

**BY: /s/ Paige C. Bush  
PAIGE C. BUSH**