

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

REGINALD EDWIN BOSSIER

PLAINTIFF

VERSUS

CIVIL ACTION NO.: 1:08-CV-00408-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S
APPLICATION FOR REVIEW OF, AND OBJECTION TO, JUNE 5, 2009,
ORDER OF UNITED STATES MAGISTRATE JUDGE**

COMES NOW the Defendant, STATE FARM FIRE AND CASUALTY COMPANY,
by and through its counsel of record and files this its Response in Opposition the Plaintiff's
Application for Review of, and Objection to, June 5, 2009, Order of United States Magistrate
Judge, and for cause would show unto the Court as follows, to-wit:

**PLAINTIFF FAILS TO SATISFY HIS HEAVY BURDEN
TO REVERSE JUDGE WALKER'S DISCOVERY ORDER**

Plaintiff neither acknowledges nor attempts to satisfy his heavy burden to reverse Judge
Walker's pretrial discovery orders. Both the statute and the procedural rule allowing district
court review of such orders provide that they may only be disturbed if they are shown to be
"clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The
Local Rules also emphasize this standard.

No ruling of a magistrate judge in any matter which he or she is empowered to hear
and determine shall be reversed, vacated, or modified on appeal unless the district
judge shall determine that the magistrate judge's findings of fact are clearly erroneous
or that the magistrate judge's ruling is clearly erroneous or contrary to law.

Local R. 72.1(A)(2); *see also Merritt v. Int'l Bhd. of Boilermakers*, 649 F.2d 1013, 1017 (5th Cir. 1981). The “clearly erroneous or contrary to law” standard is expressly distinguished from the “de novo” standard applicable to dispositive matters. Fed. R. Civ. P. 72(b). This exacting standard applies here, upon review of a nondispositive, pretrial discovery order. As shown below, Plaintiff fails to demonstrate that Judge Walker’s order is clearly erroneous or contrary to the law.

STATE FARM’S RESPONSES TO PLAINTIFF’S NUMBERED PARAGRAPHS

I.

That the Defendant admits the allegations contained in Paragraph I of the Application for Review.

II.

That the Defendant admits the allegations contained in Paragraph II of the Application for Review.

III.

That the Defendant admits that counsel for the Plaintiff sent a letter detailing what she contends are “deficiencies.” However, the Defendant would show that its discovery responses were not and are not deficient.

IV.

That the Defendant admits the allegations contained in Paragraph IV of the Application for Review.

V.

That the Defendant admits that additional discovery was been obtained while the Plaintiff's original motion to compel was pending and that the Plaintiff filed a supplemental memorandum to the motion to compel. The Defendant denies the remaining allegations contained in Paragraph V of the Application for review.

VI.

That the Defendant admits the allegations contained in Paragraph VI of the Application for Review.

VII.

That the Defendant would show that the cases cited by the Plaintiff in Paragraph VII of the Application for Review speak for themselves and that this Court is certainly familiar with federal law as it pertains to discovery. In all other respects, the Defendant denies the allegations contained in Paragraph VII of the Application for Review.

VIII.

That with respect to the particular Requests for Production and Interrogatories addressed by the United States Magistrate Judge's Order for which the Plaintiff seeks review, the Defendant would show the Order should be affirmed as follows:

**RESPONSES TO PLAINTIFF'S ARGUMENTS
REGARDING HIS REQUESTS FOR PRODUCTION OF DOCUMENTS**

OPPOSITION TO PLAINTIFF'S REQUEST NO. 3: Defendant's objection to this

Request is appropriate. Defendant has produced claim files, minus any private financial information or private personal identifiers and subject to a protective order, for other State Farm insureds within a 1/10 (0.1) mile radius of the Plaintiff's property at issue. This provided the Plaintiff with 23 properties in a geographically similar situation to that of the Plaintiff's subject damaged property and should be sufficient. Additionally, none of the "witnesses" noted in an engineering report produced in connection with this production were referring to the Plaintiff's house. Thus, these "witnesses" were not utilized in the adjustment of the Plaintiff's claim and have no bearing thereon.

Plaintiff asserts that State Farm should produce claim files for properties up to ½ mile from Plaintiff's house. He treats the ½ radius as if it were a per se rule of discovery, but as Judge Walker correctly held, a ½ mile radius has never been adopted as a "presumptively reasonable area." June 5, 2009 Order [59] at 3-4. Federal discovery is far more flexible and case-specific. Plaintiff failed to provide Judge Walker with any "basis for finding insufficient the claims information for the 23 other insureds' properties," *id.* at 4, and Plaintiff fails to provide any such basis in their motion before this Court. For this case, Judge Walker was well within his discretion in holding that State Farm's production was sufficient. Plaintiff's neighborhood is heavily populated, and the ½ mile radius sought by the Plaintiff is too broad and would include properties that are not geographically similar to the Plaintiff's property.

Each case is handled on its particular merits by the Court, which also directs the scope of permissible discovery. Plaintiff has wholly failed to provide this Court with any evidence that

would demonstrate that the Judge Walker's findings are clearly erroneous or contrary to law as required by Uniform District Court Rule 72.1(A)(2). The Plaintiff's Application is merely a rehash of his prior arguments which were rejected by the Magistrate Judge. The cases cited by the Plaintiff are not precedent but rather other cases that were or are on the trial docket of this Court. Rulings made in those cases were often specific to those cases and do not necessarily have any bearing on this case. This Court should similarly reject the arguments advanced by the Plaintiff on this Application and affirm the Magistrate Judge's Order.

OPPOSITION TO PLAINTIFF'S REQUEST NO. 5: Defendant's original objection is correct, and Judge Walker was well within his discretion to deny Plaintiff's motion on this request for production. Judge Walker correctly found that since there is no flood insurance policy involved in this case – which Plaintiff admits, [61] at 15 – any such information regarding how NFIP claims should be handled is irrelevant to the facts of this case. And Plaintiff already possesses operations guides and other training materials that applied to Plaintiff's claim.

Judge Walker also correctly found that the notes written by persons who were not involved in Plaintiff's claim, including alleged notes by an individual named Steve Burke, do not meet the terms of this Request because they had nothing to do with the adjustment of this claim.

What happened in cases with different facts unrelated to the Plaintiff's claim in this case is irrelevant and should be ignored by this Court on review. Again, the Plaintiff has not met the requirements of Uniform District Court Rule 72.1(A)(2), and the Magistrate Judge's Order should be affirmed.

OPPOSITION TO PLAINTIFF'S REQUEST NO. 7: Defendant's objection to this Request is appropriate. Defendant has produced claim files, minus any private financial information or private personal identifiers and subject to a protective order, for other State Farm insureds within a 1/10 (0.1) mile radius of the Plaintiff's subject damaged property. This provided the Plaintiff with 23 properties in a geographically similar situation to that of the Plaintiff's subject damaged property. For the same reasons set forth above in opposition to Plaintiff's Request for Production Number 3, this Court should affirm the Magistrate Judge's Order. The Plaintiff's argument on this Application is simply a rehash of his prior arguments in an effort to obtain a different ruling without satisfying the requirements of Uniform District Court Rule 72.1(A)(2). Judge Walker was well within his discretion, and Plaintiff fails to show that his order is clearly erroneous.

OPPOSITION TO PLAINTIFF'S REQUEST NO. 8: Defendant's original objection is correct. Additionally, responsive documents have been produced including a large volume of operations guides and training manuals. In particular, the Plaintiff possesses the Wind Water Claim Handling Protocol, and the Plaintiff has deposed Mr. Pupua about that issue, among other issues. Mr. Pupua was clear in his testimony about how he was instructed to handle and how he handled Plaintiff's claim as a team manager. Emails regarding other claims have no bearing on Plaintiff's claim because each insurance claim was adjusted correcting to its own merit. This particular Request is illustrative of the Plaintiff's overly broad discovery requests seeking information far beyond the scope of discovery required for this case, and the Magistrate Judge so

found. And again, the Plaintiff has failed to demonstrate to this Court that the Magistrate Judge's findings of fact are clearly erroneous or that his ruling is clearly erroneous or contrary to law as required by Uniform District Court Rule 72.1(A)(2). The Magistrate Judge's Order should be affirmed.

OPPOSITION TO PLAINTIFF'S INTERROGATORY NO. 1: The address of Joseph Ziz has been provided, and he will be deposed on July 9, 2009. The remaining individuals are employees, friends, and relatives of the Plaintiff whose contact information is better known to the Plaintiff than the Defendant. No other individuals with discoverable knowledge have come to the Defendant's attention at this time, but if any such persons do appear, the Defendant is mindful of its obligations under Rule 26.

OPPOSITION TO PLAINTIFF'S INTERROGATORY NO. 19: Defendant's original objection is correct. Furthermore, Defendant's original answer is both responsive and sufficient to the Interrogatory.

OPPOSITION TO PLAINTIFF'S INTERROGATORY NO. 20: Defendant's original objection is correct. Furthermore, Defendant's original answer is both responsive and sufficient to the Interrogatory.

As to both of these Interrogatories, Judge Walker correctly found and ruled that the Defendant has responded fully. The controlling policy provision on inflation coverage is clear and unambiguous, and State Farm has already produced its policy procedures for applying inflation coverage. There is nothing else to provide to the Plaintiff on this issue regarding the

inflation index. Judge Walker's Order should be affirmed since the Plaintiff has failed to show that the findings of fact are clearly erroneous or that the ruling is clearly erroneous or contrary to law as required by Uniform District Court Rule 72.1(A)(2).

OPPOSITION TO PLAINTIFF'S INTERROGATORY NO. 21: Defendant's original objection is correct. Furthermore, Plaintiff is not entitled to this information pursuant to this Court's Order regarding this same type of Request in Marion v. State Farm Fire and Casualty Co., Civil Action No.: 1:06-CV-00969, [Doc. 231]. Plaintiff is only entitled to information regarding the identity of eyewitnesses pertaining to his claim, and this information is contained in the claim file previously produced.

The Magistrate Judge's Order properly restricts the Plaintiff to witnesses whose accounts were utilized in the investigation of his claim. The Plaintiff has failed to provide this Court with any evidence or law to the contrary. Under the Plaintiff's rationale, anything utilized by State Farm in the investigation of any claim might be discoverable, but this is simply not the law and would only add useless expense and cause unnecessary consumption of time in this case. The Plaintiff's case is not a springboard for discovering information about other claims and cases that have nothing to do with his own claim.

Accordingly, Judge Walker was well within his discretion to limit discovery to the issues raised in the pleadings pertaining only to the Plaintiff's particular claim that is at issue in this lawsuit. The Magistrate Judge's Order should be affirmed.

WHEREFORE, PREMISES CONSIDERED, the Defendant, STATE FARM FIRE AND

CASUALTY COMPANY, respectfully requests that Plaintiff's Application for Review of, and Objection to, June 5, 2009, Order of United States Magistrate Judge be denied and that the Magistrate Judge's Order dated June 5, 2009, be affirmed for the reasons set forth herein.

Respectfully submitted,

BRYAN, NELSON, SCHROEDER,
CASTIGLIOLA & BANAHAN, PLLC
Attorneys for Defendant,
STATE FARM FIRE & CASUALTY COMPANY

BY: /s/ H. Benjamin Mullen
H. BENJAMIN MULLEN

CERTIFICATE OF SERVICE

I, **H. BENJAMIN MULLEN**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have this date electronically filed the foregoing Response in Opposition the Plaintiff's Application for Review of, and Objection to, June 5, 2009, Order of United States Magistrate Judge with the Clerk of Court using the ECF system which sent notification of such filing to the following:

Judy M. Guice, Esq.
JUDY M. GUICE, P.A.
Post Office Box 1919
Biloxi, MS 39533-1919

DATED, this the 6th day of July, 2009.

/s/ H. Benjamin Mullen

H. BENJAMIN MULLEN

H. BENJAMIN MULLEN (9077)
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