

**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

**REPLY IN SUPPORT OF [75] MOTION FOR ORDER TO SHOW CAUSE
FOR FAILURE TO COMPLY WITH COURT ORDER**

COMES NOW the Plaintiff, by and through undersigned counsel, and files herewith his Reply in Support of [75] Motion for Order to Show Cause for Failure to Comply With Court Order and would show unto this Honorable Court the following:

1.

State Farm's disingenuous response well demonstrates the necessity of leveling substantial sanctions against the company for its flagrant discovery abuses in this case. State Farm's antics and excuses can no longer be tolerated by a system of justice that is based on honest compliance to the rules governing these proceedings.

2.

While there can be no doubt but that State Farm failed to comply with this Honorable Court's [59] Order of June 5, 2009, its response is intentionally designed to obfuscate its disobedience. State Farm maintains that "Plaintiffs [sic] claim that State Farm did not submit sufficient emails to the Court for *in*

camera review, specifically emails numbered 0456-HO through 0511-HO.” The truth of the matter is that this is no mere “claim” by Plaintiff. State Farm did in fact violate the Court’s order that specific emails withheld under a claim of privilege or otherwise be provided for *in camera* inspection. The issue now before the Court is simply: whether State Farm’s violation of the order will be excused and determined “moot” because it submitted the documents after it was caught by counsel for Plaintiff?

3.

To read State Farm’s response, one would think that it was mere coincidence that “undersigned [State Farm] counsel discovered the omission” of documents on August 3, 2009, just hours after the subject motion was filed by the Plaintiff. Indeed, State Farm’s counsel not once, in its response or in its letter to the Court of August 3, takes responsibility for withholding the ordered documents until after Plaintiff’s Motion to Show Cause.

4.

Moreover, State Farm never offers a reasonable or legitimate explanation for its disobedience with the Court’s order. Counsel for State Farm specifically addressed the withheld documents in its [39] response regarding the Motion to Compel when it stated:

Additionally, the Plaintiff incorrectly represents that the Privilege Log attached as Exhibit “B” to the Motion to Compel does not assert privilege as to emails. The contrary is true. The Privilege Log to which Plaintiff refers is part of the Defendant’s Supplemental Pre-Discovery Core Disclosures and

asserts attorney-client privilege and work product privilege as to those items. Plaintiff is incorrect in his assertion that those emails are not privileged if they pertain to how or why a decision was made regarding his claim. Those communications were made during a time when Plaintiff's counsel was negotiating the claim on behalf of Plaintiff. Communications between State Farm and its attorneys related to negotiations between it and Plaintiff's counsel are clearly privileged regardless of the topic of discussion as such communications between State Farm and its own counsel were in anticipation of litigation and constitute work product. Therefore, the privilege assertion should be upheld. However, if the Court prefers to and requests to review the emails in question *in camera*, Defendant will fully comply.

[ECF 39 at page 2-3]. Notwithstanding this discussion, counsel for State Farm inexplicably "inadvertently left out" the very same emails relied upon in opposition to the Motion to Compel. This unsupported, unspecified excuse hardly constitutes good cause or excusable neglect. Indeed, Defendant does not maintain that good cause or excusable neglect exists. Closing the barn door after the horse is out does not cure the original violation.

5.

Plaintiff should not be required to have his counsel's time spent on checking and double checking State Farm's work to ensure that Court orders are complied with. That this strategy is intentional is obvious by the not only unapologetic but hostile response received from opposing counsel when discrepancies and omissions are pointed out. See, Exhibit A.

6.

This Court has issued death knell sanctions against plaintiffs for allegedly failing to answer discovery and comply with court orders concerning discovery. See, e.g., *Prestia v. USF&G*, Civil Action No. 1:08-cv-1432-LG-RHW at ECF 38 and 39. Defendant has shown no reason why substantial sanctions should not be levied against it for disobeying a valid order of this Court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court enter an Order requiring State Farm to show cause why it should not be held in contempt of Court or otherwise sanctions for the failure to produce the ordered emails for *in camera* inspection 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 17th day of August, 2009.

Respectfully submitted,

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

JUDY M. GUICE (#5057)

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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 17th day of August, 2009.

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

Rachel Poulos

From: Ben Mullen [ben@bnsch.com]
Sent: Friday, August 07, 2009 12:27 PM
To: Judy Guice; Layna Lassiter; John Banahan
Cc: Rachel Poulos
Subject: RE: bossier v sf
Attachments: EM000033.pdf

Judy,

Please see attached. The copier apparently decided to skip this obviously useful and informative email document during the copying process, which is, as noted by the Court in its Order, a duplicate of other nearby email documents in the production. In any event, I hope this doesn't add to your weariness in having to read the document, and I certainly hope your having to now read the document out of order doesn't add to the lack of appreciation.

Ben

H. Benjamin Mullen, Esq.
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From: Judy Guice [mailto:judy@judyguice.com]
Sent: Friday, August 07, 2009 12:00 PM
To: Ben Mullen; Layna Lassiter; John Banahan
Cc: Rachel Poulos
Subject: bossier v sf

Ben--I received the court ordered emails you sent. However, despite your representation in the cover letter, you did not forward BOSR33EM.

Having to continually check your work and point out omissions is tiresome and unappreciated.

Judy M. Guice
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<http://pages.teamintraining.org/ms/nikesf09/jguice>

