

**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 REGARDING DOCUMENTS REVIEWED *IN CAMERA*

In accordance with [59] the Court's order of June 5, 2009, the Court has reviewed *in camera* certain emails withheld from production by State Farm on grounds of privilege. The pages of emails are sequentially numbered BOSR00000001PRIV through BOSR000000048; BOSR00000010EM through BOSR00000035EM; and BOSR00000045EM through BOSR00000050EM. The Court will first take the opportunity to advise counsel that any time documents claimed to be privileged are ordered produced for *in camera* inspection, the privilege log asserting the privilege claimed should accompany the documents delivered to the Court. In the present case, searching through other documents filed with the Court yielded the pertinent privilege log attached as an exhibit to another pleading.

The privilege claimed for all the documents reviewed by the Court is "anticipation of litigation." Although all the emails in question predate the August 20, 2008, filing of this lawsuit,¹ it is the nature of the materials at issue and the circumstances of the case which determine whether materials were prepared in anticipation of litigation rather than the date litigation actually commenced. Documents prepared in the ordinary course of business are not protected as prepared in anticipation of litigation. This case is Plaintiff's claim under his State

¹The emails are dated between March 6, 2008 and June 19, 2008.

Farm homeowner's insurance policy for losses incurred in Hurricane Katrina. The emails concern certain dealings with respect to that claim, some of which appear to be documents generated in the ordinary course of the insurer's business, and others which do appear to be protected as generated in anticipation of litigation. After careful examination of each page of the documents, the Court finds the following documents are protected from discovery:

Page BOSR00000001PRIV - Page BOSR00000003PRIV consisting of emails between Danye Smith and attorney Scot Spragins, from Terry Blalock to Spragins among others, and from Michael Sebald to Spragins.

Page BOSR00000007PRIV, top portion: 3/10/2008 email from Sebald to Spragins (identical to part of Page BOSR00000003PRIV above).

Page BOSR00000009PRIV through Page BOSR00000010PRIV (repeats of Pages BOSR00000001PRIV through Page BOSR00000003PRIV above).

Top of Page BOSR00000012PRIV the first email on the page only, from Scot Spragins to Danye Smith.

Top of Page BOSR00000015PRIV emails from Michael Sebald and Spragins.

Top of Page BOSR00000017PRIV emails between Michael Sebald, Danye Smith and Spragins.

Page BOSR00000019PRIV emails between Terry Blalock, Michael Sebald and attorneys Spragins and Goodloe Lewis.

Page BOSR00000021PRIV through Page BOSR00000023PRIV (repeats of Pages BOSR00000001PRIV through Page BOSR00000003PRIV above).

Page BOSR00000025PRIV (repeats of emails from BOSR00000003PRIV; Page BOSR00000021PRIV through Page BOSR00000024.)

Page BOSR00000027PRIV through the top of BOSR00000028PRIV (repeats emails from BOSR00000001PRIV through Page BOSR00000003PRIV).

Page BOSR00000030PRIV through top of Page BOSR00000031PRIV (repeats of emails from BOSR00000002PRIV through Page BOSR00000003PRIV).

Page BOSR00000033PRIV through Page BOSR00000034PRIV (repeats of emails from BOSR00000002PRIV through Page BOSR00000003PRIV).

Page BOSR00000036PRIV through top of BOSR00000038PRIV (repeats of emails from BOSR00000001PRIV through Page BOSR00000003PRIV).

Top of Page BOSR00000040PRIV emails between Danye Smith and Scott Spragins.

BOSR00000043PRIV emails between Sebald and Spragins (repeats of emails from BOSR00000015PRIV).

BOSR00000021EM email dated 6/12/2008 from Danye Smith to Terry Blalock.

BOSR00000045EM (repeat of email on BOSR00000021EM).

BOSR00000046EM 6/12/2008 emails between Blalock and Danye Smith.

For the following reasons, the Court finds the following documents are not protected from discovery and shall be produced. Several pages of documents are simply copies of correspondence from Plaintiff's counsel to attorneys Spragins and Lewis, and are not protected from disclosure. These documents are pages BOSR00000004PRIV; BOSR00000006PRIV; the bottom portion of BOSR00000007PRIV through BOSR00000008PRIV; BOSR00000011PRIV; bottom of BOSR00000012PRIV through BOSR00000014PRIV; the bottom of BOSR00000015PRIV through BOSR00000016PRIV; bottom of BOSR00000017PRIV through BOSR00000018PRIV; BOSR00000020PRIV; BOSR00000024PRIV; BOSR00000026PRIV; bottom of BOSR00000028PRIV through BOSR00000029PRIV; bottom of BOSR00000031PRIV through BOSR00000032PRIV; BOSR00000035PRIV; bottom of BOSR00000038PRIV through BOSR00000039PRIV; bottom of BOSR00000040PRIV through BOSR00000042PRIV; BOSR00000044PRIV.

BOSR00000005PRIV and BOSR00000045PRIV through BOSR00000048PRIV, and the emails on pages BOSR00000047EM through BOSR00000050EM appear to be correspondence generated in the ordinary course of business and are not protected from disclosure.

The documents with pages numbered BOSR00000016EM through BOSR00000019EM and BOSR00000030EM through BOSR00000033EM appear to be identical copies of a prior draft of the documents numbered BOSR00000010EM through BOSR00000015EM and BOSR00000023EM through BOSR00000027EM, the latter two also being identical to one another. These documents are a re-evaluation summary of Plaintiff's loss upon which State Farm based an offer to Plaintiff. That being the case, the Court sees no reason why these documents should be protected as prepared in anticipation of litigation. The emails on BOSR00000020EM, BOSR00000022EM, BOSR00000028EM, BOSR00000034EM, the statement of loss on BOSR00000029EM and the interest calculation on BOSR00000035EM are likewise directly related to the reevaluation and offer, and will also be held discoverable. It is therefore,

ORDERED that by August 7, 2009, State Farm shall produce to Plaintiff all documents which the Court has herein held not protected from discovery.

SO ORDERED, this the 31st day of July, 2009.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE