

**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

**RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SANCTIONS
UNDER RULE 37(b) FOR FAILURE TO COMPLY WITH [124]
COURT ORDER OF SEPTEMBER 3, 2009**

COMES NOW the Defendant, STATE FARM FIRE AND CASUALTY COMPANY,
by and through its counsel of record and files this its Response in Opposition to the Plaintiff's
Motion for Sanctions Under Rule 37(b) for Failure to Comply with [124] Court Order of
September 3, 2009, and for cause would show unto the Court as follows, to-wit:

I.

That the Defendant admits the allegations contained in Paragraph I of the Motion for
Sanctions.

II.

That the Defendant admits the allegations contained in Paragraph II of the Motion for
Sanctions.

III.

That the Defendant admits that on March 9, 2009, counsel for the Plaintiff sent counsel
for the Defendant a letter regarding the Defendant's discovery answers. The Defendant denies

the remaining allegations contained in Paragraph III of the Motion for Sanctions.

IV.

That the Defendant admits the allegations contained in Paragraph IV of the Motion for Sanctions.

V.

That the Defendant admits the allegations contained in Paragraph V of the Motion for Sanctions.

VI.

That the Defendant admits the allegations contained in Paragraph VI of the Motion for Sanctions.

VII.

That the Defendant admits the allegations contained in Paragraph VII of the Motion for Sanctions.

VIII.

That the Defendant would show that this Court's Order speaks for itself. The Defendant denies the remaining allegations contained in Paragraph VIII of the Motion for Sanctions.

IX.

That the Defendant admits the allegations contained in Paragraph IX of the Motion for Sanctions to the extent that only part of the Agreed Order is described. The Agreed Order also required production of unredacted copies of claim files that had previously been produced with

redactions within 14 days from the date of the Order as well. That was fully complied with by the Defendant.

X.

That the Defendant admits the allegations contained in Paragraph X of the Motion for Sanctions.

XI.

That the Defendant admits the allegations contained in Paragraph XI of the Motion for Sanctions.

XII.

That the Defendant denies the allegations contained in Paragraph XII of the Motion for Sanctions. The Defendant provided the unredacted claim files from the previous claim file production as required by the Agreed Order on September 14, 2009. Also, with respect to the remaining other claim files, counsel for the Defendant became aware of a problem with getting the files in and began trying to investigate the holdup on receiving the files. Counsel for the Defendant received an answer and provided that information to both counsel for the Plaintiff and the Court on September 24, 2009. The individual responsible for gathering and scanning the files in the Southern Zone for State Farm had been out of the office the week prior. Nevertheless, a disk had been made of the claim files on Monday, September 21, 2009, within the time agreed to by Plaintiff's counsel for the production, but the disk did not reach counsel for the Defendant until Thursday, September 24, 2009. The disk was immediately provided to counsel for the

Plaintiff at or near noon of September 24, 2009. Another disk with twelve additional claims was provided on September 29, 2009. See Exhibits “A,” “B,” and “C,” respectively attached hereto.

XIII.

That the Defendant denies the allegations contained in Paragraph XIII of the Motion for Sanctions.

XIV.

That the Defendant denies the allegations contained in Paragraph XIV of the Motion for Sanctions.

XV.

That the Defendant denies that any conduct on its part warrants the extreme sanction of default judgment. The Defendant had already complied with part of the Agreed Order as of September 14, 2009, and had the vast majority of the remainder of it ready on a disk within the time for providing it agreed to by the Plaintiff. Though the disk did not arrive at the office of Defendant’s counsel until September 24, 2009, as soon as the disk containing the roughly 150 claims was received by Defendant’s counsel, a copy was hand-delivered to counsel for the Plaintiff at her office in Biloxi. The Defendant denies the remaining allegations contained in Paragraph XV of the Motion for Sanctions.

XVI.

That the Defendant denies the allegations contained in Paragraph XVI of the Motion for Sanctions, and particularly, the Defendant denies that any conduct on its part warrants the

imposition of any sanctions and especially the most severe sanction of default judgment.

XVII.

That the Defendant denies the allegations contained in Paragraph XVII of the Motion for Sanctions.

XVIII.

That the Defendant denies the allegations contained in Paragraph XVIII of the Motion for Sanctions. In particular, it is puzzling why Plaintiff's counsel would cut her European vacation short since the trial of this case has been set since 2008, and Plaintiff's counsel planned her vacation knowing the trial date. Surely all that needed to be done to prepare the Plaintiff's case was known to Plaintiff's counsel prior to her commitment to travel to Europe in September of 2009. Furthermore, Plaintiff's counsel has not had to exert extreme effort during the discovery process. While it is true that Plaintiff has filed numerous motions to compel and for sanctions, typically to compel responses to overly broad and sweeping requests, those motions have, for the most part, been denied or overruled. To the extent that the Defendant was required to provide additional information, it has done so in more-than-sufficient time for Plaintiff and his counsel to evaluate that information.

XIX.

That the Defendant admits the allegations contained Paragraph XIX of the Motion for Sanctions and would also ask to be relieved from the requirement of filing a separate memorandum in support of its response.

WHEREFORE, PREMISES CONSIDERED, the Defendant, STATE FARM FIRE AND CASUALTY COMPANY, respectfully requests that the Plaintiff's Motion for Sanctions Under Rule 37(b) for Failure to Comply with [124] Court Order of September 3, 2009, be denied 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 Motion for Sanctions Under Rule 37(b) for Failure to Comply with [124] Court Order of September 3, 2009, 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 7th day of October, 2009.

/s/ H. Benjamin Mullen
H. BENJAMIN MULLEN

H. BENJAMIN MULLEN (9077)
JOHN A. BANAHAN (1731)

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CASTIGLIOLA & BANAHAN, PLLC
Attorneys at Law
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Fax: (228)769-6392
Email: ben@bnsch.com
John@bnsch.com

Ben Mullen

From: Ben Mullen
Sent: Thursday, September 24, 2009 11:05 AM
To: 'Judy Guice'; Walker_chambers@mssd.uscourts.gov
Cc: 'Rachel Poulos'; John Banahan; Layna Lassiter
Subject: Bossier v. State Farm, Civil Action No.: 1:08-CV-00408-LTS-RHW
Importance: High
Attachments: Lt to Judy Guice re remaining claim files per Order of 9.3.09.pdf

Judy and Judge Walker,

Please see the attached correspondence regarding the other property claim file production and the pending motion for sanctions. I just received the disk with the files on it this morning, although the date on the disk indicates that it was created on Monday, September 21, 2009. Highlighting the electronic files also shows creation on September 21, 2009.

Would it be possible for us to handle this on the phone today with respect to the motion for sanctions? Please let me know.

Thanks.

Ben Mullen

H. Benjamin Mullen, Esq.
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Exhibit "A"
Page 1 of 1

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Of Counsel
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JOHN F. BRYAN, III
1915 -1994

*Also Admitted in Alabama

September 24, 2009

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

Via Email and First Class Mail

**RE: Reginald Bossier v State Farm Fire
Our File No.: 08-20,720**

Dear Judy:

I just received a disk containing the other claim files, and I am copying it now. It will be hand-delivered to you today. These are in addition to the engineer reports we previously provided pursuant to the Court's September 3, 2009, Order, on September 14, 2009.

Apparently, the southern zone contact for State Farm was out of the office last week when State Farm was trying to gather these other claim files which contributed to the delay. In other words, my State Farm contact could not reach the person who was actually gathering these files and had no way of getting them scanned until this week. Also, there are some renewal certificates and declarations pages that we are still trying to locate for some of these files, and those will be forwarded as soon as I receive them. The materials that you will be receiving today should constitute mainly what you are looking for, and I do not believe that renewal certificates and declarations pages are of any real value to you. But, I wanted to let you know that they will be coming to you as well once they are located.

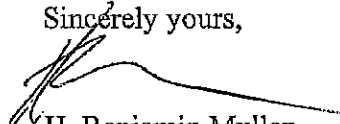
In any event, I am copying Judge Walker on this letter. If he is available today, I think it would be worth a telephone conference to resolve your sanctions motion rather than go through the whole process. I am not sure what else I can tell you or the Court other than what I have stated in this letter. I apologize for this short delay, but you should have ample time yet to review these documents.

Exhibit "B"
Page 1 of 4

Judy Guice, Esq.
September 24, 2009
Page Two

With kindest regards, I remain

Sincerely yours,



H. Benjamin Mullen

Enclosures

cc: Hon. Magistrate Robert H. Walker (w/out encs.)

Additional Claim Files Included:

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1928 -1985

JOHN F. BRYAN, III
1915 -1994

**Also Admitted in Alabama*

September 29, 2009

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

Via Federal Express

**RE: Reginald Bossier v State Farm Fire
Our File No.: 08-20,720**

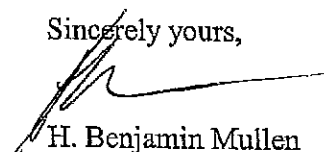
Dear Judy:

Please find enclosed a disk containing twelve (12) additional claim files we just received from State Farm. I had them double check to make certain that the entire agreed area was covered. These are in addition to the claim files we previously provided pursuant to the Court's September 3, 2009, Order.

Also, please note that there are renewal certificates and declarations pages that we are still trying to locate for claim nos. 24-Z457-680 and 24-Z457-981 and those will be forwarded as soon as I receive them.

With kindest regards, I remain

Sincerely yours,



H. Benjamin Mullen

Enclosure

cc: Hon. Magistrate Robert H. Walker (w/out encs.)

Exhibit "C"
Page 1 of 2

P:\CaseFiles - M-Z\StateFarm\State Farm avs

<u>Name</u>	<u>Size</u>	<u>Type</u>	<u>Last Modified</u>
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