

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENE LOUISE PERKINS and)	Case No.: 1:07cv00116-LTS-RHW
RICHARD PERKINS)	
	Plaintiffs)
)	Judge: L.T. Senter, Jr.
vs.)	
)	
STATE FARM FIRE AND CASUALTY)	Magistrate Judge: Robert H. Walker
COMPANY)	
	Defendants)
)	

**PLAINTIFFS' OPPOSITION TO STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION TO QUASH OR LIMIT PLAINTIFFS' NOTICE OF RULE 30(b)(6)
DEPOSITION WITH RULE 30(b)(5) REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW Plaintiffs Arlene Louise Perkins and Richard Perkins who move this Honorable Court to deny State Farm Fire and Casualty Company's motion to quash or limit Plaintiff's Notice of 30(b)(6) Deposition with Request for Production of Documents (Rec. Doc. 112) on the grounds here stated:

Plaintiffs are Entitled to Take Defendant's Deposition

The Federal Rules provide two basic approaches for noticing the depositions of corporations or other entities.¹ First, the notice may name a particular director, officer, or managing agent pursuant to Fed. R. Civ. P. 30(b)(1). Under this code section, the individual does not need to be personally served.² In the alternative, the notice may name the entity as the deponent and describe the matters on which examination is requested under Fed. R. Civ. P. 30(b)(6). Here, the deposition notice must be directed to the entity itself and not the officer or

¹ See *Travelers Indem. Co. of Illinois v. Hash Management, Inc.*, 173 F.R.D. 150, 155 (M.D.N.C. 1997).

² See *Id.*

agent testifying on its behalf.³ The deposition notice or subpoena directed to the entity must “describe with reasonable particularity the matters on which the examination is requested.”⁴ The entity will designate and adequately prepare a witness or witnesses to address these matters.⁵

The original purpose of this rule was to reduce the problems parties endured when attempting to elicit information from a corporate organization.⁶ The person designated is authorized to speak on behalf of the corporation and the testimony is binding on the corporation. As a result, there is an advantage to examining a witness officer or agent under 30(b)(6) because the testimony may be used for any purpose under Fed. R. Civ. P. 32.⁷

State Farm Fire and Casualty Company argues that there is scant justification for a corporate deposition in this case.⁸ Mr. and Mrs. Perkins are entitled to the corporation’s statement on these issues, because State Farm Fire and Casualty Company is the defendant in this action, not individual adjusters or other individual employees or agents of State Farm Fire and Casualty Company.⁹ The Plaintiffs are entitled to try their case in the manner best suited to their claims, not as State Farm Fire and Casualty Company tells them to.

However, Defendant and Plaintiffs are scheduling adjusters, experts, and other relevant witnesses with first-hand knowledge of the claims handling in this case. Plaintiffs are willing to forego scheduling a *separate* 30(b)(6) deposition if State Farm Fire and Casualty Company will

³ Fed. R. Civ. P. 30(b)(6).

⁴ Fed. R. Civ. P. 30(b)(6).

⁵ *Id.*

⁶ Fed. R. Civ. P. 30(b)(6); Advisory Committee Notes re 1970 Amendments, Federal Civil Judicial Procedure and Rules (1999), p. 159.

⁷ *See* Fed. R. Civ. P. 32(a)(3).

⁸ Rec. Doc. 112 at 2.

⁹ In general, when an entity designates a witness in response to a Rule 30(b)(6) notice request, the entity is representing that the witness is authorized to speak on behalf of the entity. *See U.S. v. Taylor*, 166 F.R.D. 356 (M.D.N.C.), *order aff’d*, 166 F.R.D. 367 (M.D.N.C. 1996); *Lapenna v. Upjohn Co.*, 110 F.R.D. 15 (E.D. Pa. 1986). This issue becomes particularly sensitive in insurance litigation where opinions regarding contract interpretation are often disputed and closely scrutinized. Counsel for the insured is seeking to establish the defendant company’s position with regard to particular coverage issues. In contrast, State Farm may try to contend that the opinion of individual employees is not relevant and that claims are handled on a case by case basis without a “company position” regarding the interpretation of the insurance policy in question.

stipulate that these witnesses' statements represent State Farm Fire and Casualty Company's position as 30(b)(6) deponents and are binding as the testimony of the corporation.

State Farm Fire and Casualty Company's Objections to Plaintiff's 30(b)(6) Notice

State Farm Fire and Casualty Company object to "the Notice and topics therein because they are overly broad and unduly burdensome and fail to comply with the requirements of Federal rule of Civil Procedure 30(b)(b)..."¹⁰ State Farm Fire and Casualty Company specifically objects to every single one of the proposed topics outlined in Plaintiffs' 30(b)(6) notice.¹¹ Plaintiffs are seeking the company's statements that are relevant to both payments due under the policy and Plaintiffs' claims that State Farm Fire and Casualty Company engaged in bad faith behavior in its dealings with Plaintiffs. Plaintiffs are entitled to learn the basis for the denial of their claims and also to prove their claim that State Farm Fire and Casualty Company willfully directed its employees and agents to engage in misconduct in their dealings with Plaintiffs, who are policy holders with a valid claim under their insurance contract. Plaintiffs are entitled to discover relevant communications among witnesses. Plaintiffs are further entitled to vet State Farm Fire and Casualty Company's written responses through the oral deposition of person or persons who can represent the Company's position.

State Farm Fire and Casualty Company's objections to *every single* topic in the Plaintiff's notice further reflects the Defendant's attempt to avoid making any statement under oath in this matter. Because State Farm Fire and Casualty Company is the sole defendant in this case, it is crucial that Plaintiffs obtain State Farm Fire and Casualty Company's position on the matters relevant to Plaintiffs' claims.

¹⁰ Rec. Doc. 112 at 4.

¹¹ Rec. Doc. 112 at 5-25.

Conclusion

Plaintiffs are entitled to take the deposition of Defendants regarding matters relevant to their claims. Plaintiffs have named only one defendant in this action, State Farm Fire and Casualty Company. A deposition under Fed. R. Civ. P. 30(b)(6) is not only warranted, but it is necessary in order for Plaintiffs to fairly pursue their claims in this matter. State Farm Fire and Casualty Company cannot avoid its responsibilities to the Plaintiffs by evading efforts to discover the Defendant's company position on relevant matters. This Honorable Court should deny State Farm Fire and Casualty Company's motion to quash or limit Plaintiff's Notice of 30(b)(6) Deposition with Request for Production of Documents.

F. GERALD MAPLES, P.A.

/s/ F. Gerald Maples

F. Gerald Maples, T.A. (MS Bar #1860)
902 Julia Street
New Orleans, Louisiana 70113
Telephone: 504-569-8732
Fax: 504-525-6932
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2008, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

W. Scott Welch, III
William N. Reed
Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC
P.O. Box 14167
Jackson, MS 39236
swelch@bakerdonelson.com
wreed@bakerdonelson.com

Bob Galloway
Butler, Snow, O'Mara,
Stevens & Cannada, PLLC
Whitney National Bank Building
1300 25th Avenue
Suite 204
Gulfport, MS 39501
Bob.Galloway@butlersnow.com

and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants.

J. Wayne Mumphrey - PHV
MUMPHREY LAW FIRM, LLC
One Canal Place
365 Canal Street, Suite 2280
New Orleans, LA 70130

Richard A. Tonry - PHV
TONRY & GINERT
2114 Paris Road
Chalmette, LA 70043

/s/ F. Gerald Maples

F. Gerald Maples, T.A.