

**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**

**APPLICATION FOR REVIEW OF, AND OBJECTION TO, JUNE 5, 2009,  
ORDER OF UNITED STATES MAGISTRATE JUDGE**

COMES NOW the Plaintiff, by and through undersigned counsel, pursuant to Rule 72, Fed. R. Civ. P., and files this his Application for Review of, and Objection to, [59] June 5, 2009, Order of United States Magistrate Judge, and would show unto this Honorable Court the following:

1.

On or about December 2, 2008, Plaintiff propounded his first set of Interrogatories and Requests for Production of Documents to Defendant.

2.

After an extension to answer the discovery was agreed upon by counsel for the parties, Defendant provided its discovery responses on February 17, 2009.

3.

Counsel for Plaintiff sent to counsel for Defendant on March 9, 2009, a detailed letter outlining State Farm's discovery response deficiencies in a good faith effort to resolve same without Court intervention. (See ECF 33, Exhibit A)

4.

On March 20, 2009, Plaintiff filed a Motion to Compel [ECF 33] related to outstanding discovery matters.

5.

While the Motion to Compel was pending, and after additional discovery obtained, Plaintiff filed a Supplemental Memorandum in Support of Motion to Compel to update and supercede the argument made in the original motion. [ECF 54]

6.

The United States Magistrate Judge entered his Order granting in part and denying in part said Motion on June 5, 2009. [ECF 59]

7.

“A lawsuit is not a contest in concealment.” *So. Ry. Co. v. Lanham*, 403 F.2d 119, 130 (5<sup>th</sup> Cir. 1968). The discovery rules are accorded a broad and liberal treatment because mutual knowledge of all relevant facts is essential to effective litigation. *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947); *Shelak v. White Motor Co.*, 581 F.2d 1155, 1159 (5<sup>th</sup> Cir. 1978) (rules designed to prevent “trial by ambush”); *Dollar v. Long Mfg., N.C., Inc.*, 561 F.2d 613, 616 (5<sup>th</sup> Cir. 1977), *cert. denied*, 435 U.S. 996 (1978).

8.

Plaintiff is asking this Court to review and reverse the Magistrate's Order concerning the following matters:

**REQUEST NO. 3:** Produce any and all emails and documents identified through utilization of each of the following search terms, by running a search through each of State Farm's electronic databases (including those utilized to communicate with engineers or third party contractors, and those used to communicate internally and externally with claims personnel and/or management):

- (1) claim number(s) for Mr. Bossier's State Farm homeowners' claim;
- (2) name "Bossier";
- (3) policy number(s) for Mr. Bossier's State Farm homeowners policy(s);
- (4) any other identifier used to identify Mr. Bossier, his policy(s) or his claim(s);
- (5) claim number(s) for the State Farm homeowners' claim(s) of each of the State Farm insureds located within ½ mile of the Bossier home located at 1987 Bayside Drive, Biloxi;
- (6) last name of each of the State Farm insureds located within ½ mile of the Bossier home;
- (7) policy number(s) for the State Farm homeowners policy(s) of each of the State Farm insureds located within ½ mile of the Bossier home;
- (8) any other identifier used to identify each of the State Farm insureds located within ½ mile of the Bossier home, their policy(s) or their claim(s);

**RESPONSE TO REQUEST NO. 3:** Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, time, geographic area, and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information regarding claim

files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this request to the extent it seeks documents protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. §§ 3500 *et seq.* Defendant objects to this request because complete search and response would be unduly burdensome and expensive.

Subject to and without waiving the foregoing, see the non-privileged portion of the claim file for the claim made the basis of this suit and related e-mails which pertain to the Plaintiff's claim.

**MAGISTRATE'S ORDER AS TO NO. 3:** "Request No. 3 seeks production of emails and documents identified by running database searches (1) using Plaintiff's claim numbers, name, or other identifiers, and (2) using the claim numbers, names, policy numbers and other identifiers of all State Farm insureds located within one-half mile of Plaintiff's home. State Farm responds that it has produced claims files for some 23 properties of its insureds located within a 1/10 mile radius of Plaintiff's property.<sup>1</sup> This Court has not adopted a per se ½ mile radius as a presumptively reasonable area within which an insurer must produce claims information as to its other insureds. To the extent that State Farm has not produced the claims information for the 23 properties it claims to have produced, it shall do so within five days of the date of this order. Without some basis for finding insufficient the claims information produced for the 23 other insureds' properties, the Court will not require further production in this regard. With

---

<sup>1</sup>Plaintiff states in reply that State Farm has produced claims information with respect to only 16 properties of its other insureds. [Footnote in original order].

respect to challenged redactions in the files, the Court finds, consistent with *Marion v. State Farm*, 1:06:cv969-LTS-RHW, Doc. [231], that Plaintiff is entitled to information as to the identity of purported eyewitnesses interviewed as part of the investigation into Plaintiff's claim, or information upon which State Farm relied in adjusting Plaintiff's claim, but he is not entitled to discover eyewitness accounts obtained by State Farm which were not part of the investigation or adjustment of Plaintiff's claim."

**ARGUMENT:** On multiple occasions, the Magistrate Judge has ordered production of specific information from claims files for other insureds located within ½ mile of the claim being litigated. For example, in *Gunn v. Lexington*, Civil Action No. 1:07-cv-00478-LTS-RWH, (3/03/08) [ECF 89], this Honorable Court issued an order requiring the insurer to produce documents for claims within ½ mile of Plaintiff's property as follows:

1. Copies of any and all checks tendered by Lexington to its insureds for damages sustained to insured properties attributable to wind damages including, but not limited to, damages to insured dwelling, other structures, personal property and additional living expense coverages;
2. Copies of all loss summaries, or the Lexington equivalent, if such documents exist, setting forth with particularity the damages for which Lexington tendered compensation to its insureds;
3. Copies of all engineering reports prepared by or on behalf of Lexington for each such insured property for which payments were made; copies of all photographs of each insured property within each claims file;

4. Copies of all diagrams, if such exist, of each said insured property;
5. Copies of all photographs of each insured property within each claims file; and
6. Copies of all declaration sheets of each insured property which sets forth the coverage limits and deductibles applicable for each coverage type under the policy at issue.

Similarly, in *Muller v. State Farm Fire & Cas. Co.*, 1:06-cv-95-LTS-RHW, the Magistrate Judge ordered State Farm to produce:

1. copies of any and all checks tendered by State Farm to its insureds for damages sustained to insured properties attributable to wind damages including, but not limited to, damages to insured dwelling, other structures, personal property and additional living expense coverages;
2. copies of all loss summaries, or the State Farm equivalent, if such documents exist, setting forth with particularity the damages for which State Farm tendered compensation to its insureds;
3. copies of all engineering reports prepared by or on behalf of State Farm for each such insured property for which payments were made;
4. copies of all photographs of each insured property within each claims file;
5. copies of all diagrams, if such exist, of the insured property; and
6. copies of all declaration sheets of each insured property which sets forth the coverage limits and deductibles applicable for each coverage type under the policy at issue.

The same order should issue here.

For reasons that have not been explained, and despite having produced neighboring claims documents for properties within ½ mile in every other case in which counsel for Plaintiff has been involved, State Farm in the case *sub judice*, limited its production to 1/10 of a mile. In other words, State Farm produced only certain documents from properties located within 528 feet of Plaintiff's property. Moreover, State Farm did not produce all the materials that the Magistrate Judge found were required in *Gunn* and in *Muller*, despite State Farm's representation in response to Request for Production No. 7 (see *infra* at 13) that the *Muller* order would be followed. Inexplicably, the Magistrate Judge did not require the same documents to be produced by State Farm in the case *sub judice*, nor did he require State Farm to abide by its representation.

Neighboring claim file information is particularly necessary in this case. In the very limited geographic area hand-picked by State Farm, other claims files document that State Farm was told of witnesses who saw homes "being blown apart" within that immediate vicinity. Exhibit "A". With no protective order permitting same, State Farm unilaterally redacted the names of those witnesses. The Magistrate Judge's ruling that Plaintiff "is not entitled to discover eyewitness accounts obtained by State Farm which were not part of the investigation or adjustment of Plaintiff's claim" is violative of the broad discovery permitted by the Federal Rules of Civil Procedure.

Parties are required to identify individuals with knowledge of discoverable matter. See Rule 26(b)(1), Fed. R. Civ. P. State Farm is in possession of

information relating to the identification of individuals who saw homes in Plaintiff's neighborhood (indeed perhaps even Plaintiff's own home) "being blown apart". Those homes were located within 500 feet of Plaintiff's home. Plaintiff is entitled to this information regarding witnesses as well. As the U.S. Supreme Court observed in *Hickman, supra*:

Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. *Id.*, 67 S.Ct. at 388.

The Magistrate Judge's order should be reversed. State Farm's objections to Request No. 3 should be overruled and State Farm should be ordered to produce the same information required in *Gunn* and *Muller* for ½ mile geographic area, including but not limited to identification of witnesses.

**REQUEST NO. 5:** For each seminar, **meeting**, continuing education event, new education event, think tank, strategy meeting, planning meeting, agency meeting, adjuster meeting, executive meeting, board meeting, claims meeting, and **meetings** of any description pertaining to how hurricane claims should be handled, how Hurricane Katrina claims should be handled, how NFIP claims should be handled, and how wind vs. water claims should be handled, which were attended by any of the claims personnel involved in Plaintiff's claim in a direct or supervisory capacity, please produce any and all agendas, minutes, reports, emails, notes, letters, handouts, memoranda, correspondence, and **documents** of any sort whatsoever, paper and/or electronic, produced or generated in advance thereof, in connection therewith, and as a result thereof, also including the notes taken by each individual identified in response to Interrogatory Numbers 2 and 7 during each such meeting.

**RESPONSE TO REQUEST NO. 5:** Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, time, and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit.

Defendant objects to this request because it is vague and ambiguous by, among other things, its request for information about “meetings” as this request could encompass any communication among or between State Farm personnel. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request because it seeks information that is protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because complete response would be unduly burdensome and expensive.

Subject to and without waiving the foregoing objections, Defendant states that many hundreds of “meetings” were held on a daily basis following Hurricane Katrina. To the extent there were meetings concerning Plaintiff’s claim, Defendant refers Plaintiff to the non-privileged portion of the claim file.

**MAGISTRATE’S ORDER AS TO NO. 5:** “Request No. 5 seeks all documents whatsoever (including any notes taken by individuals) produced in connection with all meetings of any description which were attended by any of the supervisory claims personnel involved in Plaintiff’s claim pertaining to how hurricane claims (including Katrina claims) should be handled, how NFIP claims should be handled, and how wind vs. water claims should be handled. Defendant objects that the request seeks information irrelevant to the issues in this litigation, is vague and overly broad, and that hundreds of meetings occurred on a daily basis following Hurricane Katrina. Defendant asserts that to the extent any meeting concerned Plaintiff’s claim, responsive information is in the claims file previously produced to Plaintiff. In his supplemental memorandum, Plaintiff states this request seeks training materials and/or records of training and meetings with respect to claims personnel directly involved with Plaintiff’s claims regarding handling Katrina claims, NFIP claims, etc. In response, Defendant

states Plaintiff had no flood insurance policy, hence how Defendant handled NFIP claims has no relevance to Plaintiff's claim, and that Plaintiff now has the operations guides and training materials dealing with Hurricane Katrina claims-handling. The Court will not require further response to this request.

**ARGUMENT:** Defendant's objections to this Request are not sustainable and its answer is deficient. This Request seeks training materials and/or records of training and meetings, whether in the form of agendas, minutes, reports, e-mails, notes, letters, handouts, memoranda, correspondence and/or other documents that reflect training that was actually presented to claims personnel directly involved with the Plaintiff's claims about how to handle Hurricane Katrina claims, NFIP claims, and/or Wind Versus Water claims. This Request clearly seeks discoverable information in the context of this bad faith insurance lawsuit. Incomplete discovery obtained in other cases has revealed that team managers were directed to deny claims in State Farm meetings held on the Mississippi Gulf Coast. (See, e.g., Steve Burke notes Ex. 4 to ECF 42 submitted under seal). Any documents relating to meetings on Hurricane Katrina claims handling are discoverable. State Farm's unilateral decision to limit its production of responsive documents to documents in the Plaintiff's claim file is not responsive to the scope of this Request, and is not calculated to provide Plaintiff with discoverable information about claims, policies, procedures and training that were administered to the claims personnel actually involved with the Plaintiff's claim about how to handle claims like the Plaintiff's, including the Plaintiff's. Obviously,

claims training materials would not have specified the name of any particular insured and would not be contained in the Plaintiff's claim file. State Farm should be ordered to provide all documents and information responsive to this Request.

The Magistrate Judge's order limiting discovery to meetings in which Plaintiff's particular claim was discussed fails to recognize the manner in which State Farm handled claims of this nature. Meetings provided guidance to State Farm claims adjusters and team managers on how to handle certain types of claims. Produced in other litigation, for example, are notes of Team Manager Steve Burke (See Exhibit 4 submitted *in camera*, with regard to ECF 42) in which he acknowledges receiving directives to "just say no" with regard to claims for wind damage. (See page GUICJ00003694PROD) While these meetings were obviously not held specifically on Plaintiff's claim, which was but one of tens of thousands of claims handled after Hurricane Katrina, such directives obviously impacted the handling of said claim and are discoverable. Indeed, there is no justification for the Court to protect from discovery documentation on meetings held in which the handling of State Farm claims was discussed. Plaintiff is entitled to this discovery, and no reason has been given to shelter same from production.

**REQUEST NO. 7:** Please produce any and **all documents** and electronically stored information of any type, including but not limited to investigation files, reports, and other documents, which are not part of the Plaintiff's claim file, but which may be related to the damages caused by Hurricane Katrina in the general vicinity of Plaintiff's home (State Farm insured properties within ½ mile of Plaintiff's home at 1987 Bayside Drive, Biloxi) and/or which may be related to the Plaintiff's claim, including but not limited to: any and

all documents that relate to Hurricane Katrina's impact on other homes located in the general vicinity of Plaintiff's home; Statements of persons who were or who purport to be eyewitnesses to the forces of Hurricane Katrina when the hurricane came in contact with homes, trees or other structures in the general vicinity of Plaintiff's home; Engineering "loss causation" reports, and draft reports, of damage done to homes in the general vicinity of Plaintiff's home; and all claim file(s) reports and documents of any type relating to damages, losses and/or the cause of damages or losses to properties located in the general vicinity of Plaintiff's home.

**RESPONSE TO REQUEST NO. 7:** Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request because it is overly broad in subject matter, scope, geographic area, and to the extent it has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it seeks information contained in the claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this request because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. § § 3500 *et seq.* Defendant objects to this request to the extent that it seeks documents protected by the attorney/client or work product privileges, which are asserted. Defendant objects to this request because complete response would be unduly burdensome and expensive Defendant further objects to this request on the basis that it calls for information not related to the claims or defenses of any party pursuant to the Court's order in *Marion v. State Farm Fire and Casualty Company*, Civil Action No 1:06cv969, Order Granting in Part Plaintiffs' Motion to Compel [200] and Order Granting in Part Motion for Protective Order [231].

Subject to and without waiving the foregoing objections, and consistent with Judge Walker's Order of March 29, 2007 in *Muller v. State Farm Fire & Casualty Company*, Defendant will produce non-privileged portions of homeowner property damage claim files for claims arising out of Hurricane Katrina, within a reasonable distance of Plaintiff's home, which will be redacted to remove personal, private information of insureds, including, but not limited to, their names, social security numbers, drivers license numbers, financial information, policy information, and other personal information as appropriate.

**MAGISTRATE'S ORDER AS TO NO. 7:** “Request No. 7 seeks all documents which are not part of Plaintiff’s claim file, but which relate to damages caused by Hurricane Katrina in the general vicinity (within a ½ mile radius) of Plaintiff’s home, including statements of purported eyewitnesses. The Court holds its ruling with respect to Request No. 3 adequately addresses this issue, and will require no further production than that stated with respect to Request No. 3.”

**ARGUMENT:** The argument addressed above with regard to Request No. 3 adequately addresses this issue. State Farm represents in its response to Request for Production No. 7 that it will follow the Court’s order in *Muller*, yet it has failed to do so, and the Magistrate Judge was in clear error in not compelling such compliance.

**REQUEST NO. 8:** For each and every individual identified in response to Interrogatory Numbers 2, 7, 8, 10, 11 and 12, and for any other person who was (1) involved in the investigation of Plaintiff’s claim, (2) was responsible for supervising the people involved in the investigation of the Plaintiff’s claim, (3) was responsible for training, or did train the people involved in the investigation of Plaintiff’s claim or the people responsible for supervising the people involved in the investigation of the Plaintiff’s claim, produce any and **all documents** and/or compilations of documents, in any form, in any manner relating to training or directives about how to adjust (investigate/handle) Hurricane Katrina claims in Mississippi; including, but not limited to emails and memorandums saved in any form; and including, but not limited to compact disks (CDs) / (DVDs), floppy disks, and/or removable drives, in any manner or related to said individual’s “CAT PL FILE”, “CAT PL DISK” and/or “KATRINA FILES”, and/or in any manner related to any other compilation of documents, notes, handouts, emails, data and **documents** of any sort, paper and electronic, known by any name, that contain information about State Farm’s policies, procedures, recommendation, guidelines, and/or requirements for investigating, adjusting and handling of the Plaintiff’s Hurricane Katrina claims, and/or investigating, adjusting and handling Hurricane Katrina claims similar to those of the Plaintiff.

**RESPONSE TO REQUEST NO. 8:** Defendant objects to this multipart request as it is formulated with subparts requiring separate responses yet listed as one Request for Production. Defendant objects to this request because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to the discovery of admissible evidence in this litigation. Defendant objects to this request because it is overly broad in scope, subject matter, time, and to the extent it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. Defendant objects to this request because it is vague and ambiguous. Defendant objects to this request to the extent that it seeks information that is privileged, proprietary, trade secret, or protected by the Mississippi Trade Secret Act. Defendant objects to this request to the extent it seeks information that is protected by the E-Government Act, 44 U.S.C. § § 3500 *et seq.* To the extent this request seeks to compel Defendant to produce information related to other insureds, other policies or other claims not at issue herein, Defendant objects that it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing, Defendant reserves the right to supplement this response.

**MAGISTRATE'S ORDER AS TO NO. 8:** "In his supplemental memorandum, Plaintiff indicates Request No. 8 should have resulted in the production of directives, policies and procedures regarding claims handling, CAT PL files and emails related to the handling of Katrina claims maintained by the individuals actually involved in handling Plaintiff's claim. Although the request as stated did not make it clear that this was what Plaintiff sought, the Court will require State Farm, to the extent that it has not already done so, to produce those documents containing State Farm directives, guidelines, policies and procedures for handling Hurricane Katrina claims in general or Plaintiff's claim specifically. Beyond this, the Court will require no further response to this request."

**ARGUMENT:** The "CAT PL FILES" or other files by any name containing claims, directives, policies and procedures and emails related to the

handling of Katrina claims maintained by the individuals actually involved in the handling of Plaintiff's claim are discoverable in the context of this bad faith litigation. Such documents have not been produced. For example, no emails sent to team manager Tip Pupua have been produced in this case despite counsel knowing from other litigation that pertinent emails were sent to him on matters such as how to handle a wind claim when there is no flood policy, as is the case here. Such emails do not have to specifically reference Plaintiff's claims to be relevant if they provide guidance on how to handle claims similar to Plaintiff's. To the extent State Farm contends materials responsive to this Request are protected due to being privileged, proprietary, or trade secret, any such objection has been waived by State Farm by its failure to produce a timely privilege log identifying the documents to which these privileges would apply. State Farm should produce all documents and other responsive information. The Magistrate Judge's order fails to require such documents to be produced.

**INTERROGATORY NO. 1:** **Identify** each person known to **you** to have knowledge of any discoverable information, and any information in any manner related to any claim or defense which is the subject of this litigation. (Do not merely refer Plaintiff to the claims file).

**ANSWER TO INTERROGATORY NO. 1:** Please see the individuals listed in Section 1 of the Defendant's Rule 26 Pre-Discovery Disclosures. Additionally, the following individuals may have discoverable knowledge:

1. Plaintiff
2. Nancy Forbes  
Secretary to Mr. Bossier  
Address Unknown

3. Sam Larossa  
Address Unknown
4. John Compton  
Address Unknown
5. Joseph Ziz  
Address Unknown

This Answer may be supplemented pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

**MAGISTRATE’S ORDER AS TO NO. 1:** “Because Plaintiff did not challenge Defendant’s response to Interrogatory No. 1 in the motion to compel [33], the Court will not address that interrogatory.”

**ARGUMENT:** Defendant is required under Rule 26(b)(1) to identify persons with knowledge of discoverable matters. Moreover, Defendant is required to supplement such information. As noted herein, Defendant is aware of eyewitnesses in Plaintiff’s neighborhood who reported seeing houses “being blown apart”. This essential information is critical and obviously discoverable. The Magistrate Judge’s statement that this interrogatory was not included in Plaintiff’s motion is an error. As noted, Plaintiff’s [54] Supplemental Memorandum was designed to bring to the Court’s attention additional matters determined during discovery. Indeed, the Supplemental Memorandum expressly states that it “updates and supercedes the argument made in the original motion.” (See ¶5 to ECF 54) Given the critical nature of discovery relating to witnesses, it was

manifestly erroneous for the Magistrate Judge to refuse to order State Farm to fully respond.

**INTERROGATORY NO. 19:** Describe the total amount of coverage potentially available as of the date of **your** response to the Plaintiff for his Hurricane Katrina claims under his Homeowner's policy that is the subject of this lawsuit, including a description of how the inflation coverage is calculated, what date is utilized for the "given date" as described in the portion of the policy describing the application of "Inflation Coverage", and identify any and all facts that support that calculation, as well as any and all facts and/or language in the subject policy of insurance, or anywhere else, that **you** contend supports utilization of the referenced date as the "given date" for determining how much inflation coverage is potentially available to the Plaintiff for his as yet unpaid Hurricane Katrina claims.

**ANSWER TO INTERROGATORY NO. 19:** The total Coverage A (Dwelling) limit was \$341,210.00. The dwelling extension coverage limit was \$59,177.00. The Coverage B (Contents) limit was \$255,90700. The Coverage C (ALE) limit was actual loss incurred.

With respect to inflation coverage, State Farm objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. State Farm objects to this interrogatory because it is overly broad in subject matter, scope, time, geographic area, and because it seeks information that has no bearing on Plaintiff's individual property damage claim made the basis of this suit. State Farm objects to this interrogatory to the extent it seeks documents protected by the work product and attorney/client privileges, which are asserted. State Farm objects to this interrogatory to the extent it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Act and these privileges are asserted. State Farm further objects to this interrogatory on the basis that Plaintiff has presented no evidence that his alleged contractual damages would exceed the applicable policy limits, and in fact has presented evidence that his alleged contractual damages are well within the applicable policy limits.

Subject to and without waiving the foregoing, and pursuant to the Court's Order Granting in Part Motion for Protective Order [231] in *Marion v. State Farm*, United States District court for the Southern District of Mississippi, Civil Action No.: 1:06cv969, the total amount of coverage available to the Plaintiff for the alleged loss in question is contained in the previously produced claim file regarding the Plaintiff's claim. The inflation coverage index is used to

automatically increase the limits of liability on dwelling policies. State Farm uses an index of inflation and constructions. Procedures for calculating the inflation index for a particular policy are contained under the section “INFLATION COVERAGE.” The “given date” is the date on which the relevant loss occurred.

**INTERROGATORY NO. 20:** Identify the source utilized by State Farm to determine the inflation “Index” “on a given date”, as described in the portion of the policy describing the application of “Inflation Coverage”, describe how often said source updates the Inflation Index and how that information is transmitted to and/or acquired by State Farm, and identify any and all language in the subject policy of insurance, or anywhere else, that you contend supports utilization of said source for determining the proper inflation “Index” for determining the amount of inflation coverage available to the Plaintiff.

**ANSWER TO INTERROGATORY NO. 20:** Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in subject matter, scope, time, geographic location, and to the extent it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information that is confidential, proprietary, trade secret, or protected by the Mississippi Trade Secret Act, and these privileges are asserted.

**MAGISTRATE’S ORDER AS TO NO. 19 and 20:** “Interrogatory No. 19 and Interrogatory No. 20 seek information regarding total coverage amounts available to Plaintiff, including a description of how inflation coverage is calculated. In response, State Farm stated the amounts of coverage under the policy, directed Plaintiff to policy procedures for calculating the inflation index and defined the term “given date” as the date on which the loss occurred. The Court will require no further response.

**ARGUMENT:** The Magistrate Judge is in error in concluding that State Farm’s response is adequate. Plaintiff is seeking to determine how State Farm interprets its inflation index and what that interpretation is based on. State Farm

maintains generally that it “uses an index of inflation and constructions”, but does not identify what index is used. The vague reference to “an index of inflation and constructions” is insufficient to permit Plaintiff to make the calculation to determine the sufficiency and accuracy of State Farm’s contention. Are we not entitled for some reason to know what that index is? Moreover, State Farm’s response fails to identify facts supporting its contention relating to the calculation and how it is performed.

State Farm’s objections preceding its purported answer are without basis and should be stricken. State Farm should be ordered to precisely answer the interrogatories. The Magistrate Judge’s order to the contrary is manifestly erroneous.

**INTERROGATORY NO. 21:** Did **you** obtain any eyewitness reports/statements that stated tornados and/or high winds were observed destroying homes, businesses or other structures on the **Mississippi Gulf Coast** during Hurricane Katrina? If so, as to each report/statement, provide the (1) name and address of eyewitness, (2) location of reported tornado and/or wind event, (3) time and date of reported tornado and/or wind event, and (4) state whether State Farm obtained a recorded and/or written statement of the eyewitness.

**ANSWER TO INTERROGATORY NO. 21:** Defendant objects to this interrogatory because it seeks information that is not relevant to any issue in this suit and that is not reasonably calculated to lead to discovery of admissible evidence. Defendant objects to this interrogatory because it is overly broad in subject matter, scope, time, geographic location, and to the extent it seeks information that has no bearing on Plaintiff’s individual property damage claim made the basis of this suit. Defendant objects to this interrogatory because it seeks information contained in the claim files of insureds who are not parties to this lawsuit and, therefore, has the potential of invading the privacy rights of those insureds. Defendant objects to this interrogatory because search and response would be unduly burdensome and expensive.

**MAGISTRATE’S ORDER AS TO NO. 21:** “Interrogatory 21 asks whether State Farm obtained any eyewitness reports/statements stating tornados and/or high winds were observed destroying structures in Hurricane Katrina, and requests identities of any such eyewitnesses, the location and time of any such wind event, and whether State Farm obtained a recorded/written statement from such witnesses. Consistent with the Court’s holding as to Request for Production No. 3, the Court finds Plaintiff is entitled only to information as to the identity of purported eyewitnesses interviewed as part of the investigation into Plaintiff’s claim, or information upon which State Farm relied in adjusting Plaintiff’s claim; he is not entitled to discover eyewitness accounts obtained by State Farm which were not part of the investigation or adjustment of Plaintiff’s claim.”

**ARGUMENT:** It is manifestly erroneous to allow State Farm to fail to disclose witnesses having knowledge of the effect of winds in close proximity to Plaintiff’s home. Regardless of whether State Farm purportedly relied upon said eyewitness information, same is discoverable. Otherwise, State Farm could merely pick and choose what it relies upon, rely only upon that which is favorable to it, and hide facts and information that is contrary to State Farm’s conclusion.

State Farm’s objections are without merit. They should be stricken and State Farm should be compelled to answer the interrogatory with regard to witnesses located within a mile of Plaintiff’s property.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court enter an Order reversing the Order of the Magistrate Judge and

compelling the Defendant to produce any and all documents responsive to specific Requests for Production served by the Plaintiff in the above referenced matter, as set forth above; and ordering the Defendant to pay costs and expenses, including reasonable attorneys' fees, incurred in bringing the Motion to Compel before the Court, together with any and all additional relief in favor of the Plaintiff deemed appropriate by the Court.

THIS the 19<sup>th</sup> day of June, 2009.

Respectfully submitted,

REGINALD EDWIN BOSSIER

BY: */s/ Judy M. Guice*

JUDY M. GUICE (#5057)

Judy M. Guice (MSB #5057)  
JUDY M. GUICE, P.A.  
P. O. Box 1919  
Biloxi, MS 39533-1919  
Telephone: (228) 374-9787  
Facsimile: (228) 374-9436

**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 19<sup>th</sup> day of June, 2009.

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



Title: Hurricane Investigation  
Insured:  
Claim/Policy No.: 24-2459-496  
FAEC File No.: 630-0066-05-26

24-2459-496

Page 2

- The home has an east-west orientation with the front of the house facing north to BaySide Dr. A channel connected to the Back Bay of Biloxi is located approximately one block east.
- The roof was not damaged. The overhanging soffit was damaged in the southeast corner of the roof. An attic vent on the west end of the house was missing. Ceilings were damaged in the kitchen, family room and garage.
- The garage door was destroyed. The front storm door was shattered. The doors and windows were all missing.
- All debris had been cleaned out of the house by others prior to our site visit.
- A neighbors' daughter, \_\_\_\_\_, reported that she witnessed trees and houses south of the \_\_\_\_\_ house being blown apart and debris thrown onto and into the \_\_\_\_\_ houses prior to the time when the floodwater began rising.
- The watermark in the house was 60" above the interior flooring.
- Limbs of a live oak tree in the backyard had fallen.
- Observations of the area are consistent with the findings of this property. There were numerous tall tree failures in the northwesterly direction.

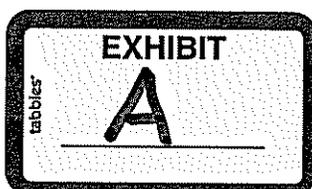
#### CONCLUSIONS & OPINIONS

Based upon the information that has been presented to FAEC and evidence gleaned during our inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION has made the following conclusions concerning the damage to the structure:

- The tree failures in the northwesterly direction are the result of the winds out of the southeast from the approaching hurricane. Hurricane force winds were experienced in this area for a number of hours prior to the full storm surge rise.
- The soffit, roof and ceiling damage inside the house was caused by wind, wind driven debris and rain.
- It is FAEC's opinion that the interior damage of the structure is the predominately caused by water surge and waves.

REDACTED

24-2459-496 00023



BX0036-000428

MAR 14 2006 8:28AM 7

NO 353 P 3  
242451 208



Title: Hurricane Damage Assessment Investigation  
Insured: \_\_\_\_\_ in  
Claim/Policy No.: 24-2451-250/2  
FAEC File No.: 630-0072-05-25

Page 2

- The home has an east-west orientation with the front of the house facing south to Bayside Dr. A channel connected to the Back Bay of Biloxi is located approximately one block east.
- The structure was damaged in several areas. The roof was severely damaged in two places. A tree fell on the east end of the house destroying the roof and ceiling. The roof damage on the west end of the house was near a damaged bedroom ceiling. The garage door was destroyed. The front storm door was shattered. The front door and most of the front windows were broken or missing.
- \_\_\_\_\_ reported that an eyewitness, \_\_\_\_\_, stated that the tree fell on the \_\_\_\_\_ house about 6 AM the morning of the storm. Furthermore, houses south of the \_\_\_\_\_ house were blown apart and debris was thrown into the \_\_\_\_\_; and \_\_\_\_\_ houses with the floodwater rising later.
- The watermark in the house was 52" above the interior flooring
- The fence around a swimming pool in the back yard was destroyed
- Observations of the area are consistent with the findings of this property. There were numerous tall tree failures in the northwesterly direction.

**CONCLUSIONS**

Based upon the information that has been presented to FAEC and evidence gleaned during our inspection, FORENSIC ANALYSIS & ENGINEERING CORPORATION has made the following conclusion concerning the damage to the structure

- The tree failures in the northwesterly direction are the result of the winds out of the southeast from the approaching hurricane
- The roof, door, fence and window damage was caused by wind
- It is FAEC's opinion that the interior damage of the structure is the result of the failure of the windows and doors due to excessive wind pressure.

The conclusions and opinions presented in this report are based on the results of FAEC's field investigation of the subject residence, as well as our analysis of the available wind and localized water level data and upon all of the other associated information that we have gathered during the course of our investigation efforts to date. If additional information or facts become available which materially affect these stated conclusions and opinions, then, FAEC reserves the right to amend or change its opinions and conclusions as needed.

REDACTED