

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

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JOE PANKEY and  
LAMAR PANKEY,

Plaintiffs,

vs.

Docket No. 1:14-cv-01008

SOUTHERN PIONEER PROPERTY &  
CASUALTY INSURANCE COMPANY,

Defendant.

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**ORDER**

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Before the Court is Plaintiffs' Motion for Protective Order [D.E. 37]. Defendant has responded in opposition, and Plaintiffs have replied. This matter has been referred to the Magistrate Judge for determination.

Background

According to the Complaint, Plaintiffs Joe Pankey and Lamar Pankey were residents of the "insured premises," which the Defendant company insured. The house suffered a fire on May 10, 2013. Plaintiffs brought suit in the Crockett County Circuit Court on December 4, 2013. Defendant thereafter removed the case to this Court.

The gist of this dispute is whether Defendant is entitled to depose the Plaintiffs even though they previously has examined both Plaintiffs under oath, and as Plaintiffs assert, during lengthy sessions over two days. Defendant insurance company counters that these sessions were not "depositions" but merely examinations under oath (EUO) that are contractually required by the provisions of the insurance policy.

## Analysis

Plaintiffs urge the Court to limit discovery on the basis of Rule 26, contending that the discovery sought is unreasonably cumulative or duplicative, that Defendants have had ample opportunity to obtain the information, and/or the burden or expense of the proposed discovery outweighs its benefit.

Defendants maintain that the EUOs were taken before any lawsuit was filed, and that the insureds were contractually obligated to undergo an EUO. *See Tom Spears v. Tennessee Farmers Mut. Ins. Co.* 300 S.W. 671 (Tenn. App. 2009). They point out that an EUO is not a “deposition.” 7 *Moore’s Federal Practice 3<sup>rd</sup> Ed.*, § 30.02 [1], p. 30-13.

The Court agrees with Defendants. The only concern the Magistrate Judge has with this EUO/deposition process is the time lapse between when the EUOs were taken and the depositions that will occur, because of the possibility of inconsistent statements caused by lapse of time. The Court notes the EUOs were accomplished on July 2, 2013 and August 7, 2013 – over a year ago. Defendant’s offer to compromise made during the telephone conference with the Court and noted in the footnote of Defendant’s memorandum – to limit these depositions of Plaintiffs to matters after the EUOs were taken, so long as the Plaintiffs agreed that the sworn statements could be used for all purposes contemplated by Rule 32 of the Federal Rules of Civil Procedure, would remedy this issue. In the interest of economy of time and effort, the Court would encourage the parties to reconsider this compromise.

Determination

The Court determines that that Plaintiffs' Motion is DENIED. The requested depositions fail to meet the criteria enumerated in Rule 26 for limiting discovery, and finds that limiting discovery as requested by Plaintiffs would be improper.

**IT IS SO ORDERED** this 31<sup>st</sup> day of October, 2014.

**s/Edward G. Bryant**  
UNITED STATES MAGISTRATE JUDGE