

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

PATRICIA JEAN DISNEY,)
)
 Plaintiff,)
)
 vs.) No. 02-2210 BV
)
 STATE FARM FIRE)
 AND CASUALTY COMPANY,)
)
 Defendant.)

ORDER GRANTING PLAINTIFF'S FOURTH MOTION TO COMPEL
AND DENYING DEFENDANT'S MOTION TO STAY DEFENDANT'S DUTY TO
RESPOND TO PLAINTIFF'S FOURTH MOTION TO COMPEL

Before the court is a motion filed May 9, 2003, by the plaintiff, Patricia Jean Disney, to compel the defendant, State Farm Fire and Casualty Company, to produce certain documents that Disney requested be produced at the depositions of Jim Boyd, Brian Birdwell, Elmycko Duncan, and Richard Schneider, specifically (1) State Farm's entire claims file, (2) written opinions from State Farm's two experts, (3) the claims supervisor's "monitor" file, and (4) the deponents' daily logs of the investigation and handling of the claim. Disney also asks that she be allowed to redepose these witnesses at State Farm's expense after receiving the claims file. In response to the motion, State Farm requested the court to deny the motion because Disney failed to file transcripts of the depositions referenced in her motion, or, in the alternative, to

stay proceedings on the motion until Disney provides the transcripts of the depositions referred to in the motion. Both Disney's motion to compel and State Farm's motion to stay were referred to the United States Magistrate Judge for determination. For the reasons that follow, Disney's motion to compel is granted and State Farm's motion to stay is denied.

Although Disney's fourth motion to compel discovery relates to the depositions of Boyd, Birdwell, Duncan, and Schneider, it is, in essence, a motion to compel production of documents. As a general rule, depositions are not to be filed with the court except under the limited circumstances set forth in the court's local rules. Local Rule 26.1(2). A deposition shall be filed "[w]hen a deposition provides factual support for a motion or a response to a motion" Local Rule 26.1(2)(A). In that event, the deposition shall be filed with the court when the motion or the response that it supports is filed. *Id.* Here, it was not necessary for Disney to file and for the court to review the deposition transcripts of Boyd, Birdwell, Duncan, and Schneider in order for the court to rule on Disney's motion to compel production of documents. On the other hand, if, as State Farm claims, its response is supported by or predicated upon the deposition testimony of Boyd, Birdwell, Duncan, and Schneider, then it was incumbent upon State Farm to procure and file the depositions with the court, which it did not do. There is no need to stay

proceedings on the motion in order to require Disney to obtain and file the depositions, and State Farm has had ample opportunity to do so and to supplement its response. Accordingly, State Farm's motion for a stay is denied.

The present motion to compel, Disney's fourth, was filed in May of 2002 before the court issued its rulings on Disney's first three motions to compel. In light of the court's rulings on Disney's first three motions to compel, a number of the issues raised in the present fourth motion to compel are now moot. In its May 16, 2003 Order Granting Plaintiff's First Motion to Compel, the court ordered State Farm to respond to Disney's expert interrogatories that sought, in substance, the opinions of State Farm's experts. State Farm has done so and has since provided its Rule 26(a)(2) expert reports to Disney. (State Farm's Mem. in Supp. of its Resp. in Opp. to Pl.'s Fifth Mot. to Compel at 9.) In the May 28, 2003 Order Granting in Part and Denying in Part Plaintiff's Second Motion to Compel, the court found that State Farm reasonably anticipated litigation as early as March 12, 2001, and that documents prepared after that date in anticipation of litigation were work product and were not required to be produced. In its May 16, 2003 Order Granting in Part and Denying in Part Plaintiff's Third Motion to Compel, the court directed State Farm to bring its entire claim filed to Boyd's deposition and make available any portions of the file to which no privilege has been

asserted.

The only remaining items in dispute are Richard Schneider's claims supervisor's "monitor" file and the daily logs of Boyd Birdwell, Duncan, and Schneider. In keeping with the court's earlier rulings, State Farm is ordered to produce the portions of Schneider's "monitor file" and the portions of the daily logs to which no claim of privilege has been made.

Accordingly, Disney's motion to compel is granted. State Farm shall produce its entire original claim file, Schneider's monitor file, and the daily logs of its employees and make available for inspection the portions of these items to which no claim of privilege has been made within eleven (11) days of the date of entry of this order and at the depositions of Boyd, Birdwell, Duncan, and Schneider if Disney elects to redepose them after reviewing the material produced in accordance with this order. Disney may redepose Jim Boyd, Brian Birdwell, Elmycko Duncan, and Richard Schneider at State Farm's costs within 14 days of receiving the items referenced herein.

IT IS SO ORDERED this 26th day of February, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE