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

ARLANDUS HARVEY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 03-2721-MlV
	)	
ALLSTATE INSURANCE COMPANY,	)	
	)	
Defendant.	)	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO ANSWER CERTAIN DISCOVERY REQUESTS

Before the court is the July 23, 2004 motion of the plaintiff, Arlandus Harvey, to compel the defendant, Allstate Insurance Company ("Allstate"), to answer Interrogatory Nos. 10, 11, and 12 of the plaintiff's first set of interrogatories. In general, the plaintiff contends that the three interrogatories at issue seek the name and address of each Tennessee policy holder whose auto-theft claim was investigated by Allstate's expert, Richard Pacheco, and his company, North Eastern Technical Services ("NETS"). The motion was referred to the United States Magistrate Judge for determination. The defendants filed a timely response on August 4, 2004. For the reasons stated below, the plaintiff's motion to compel is granted in part and denied in part.

In this case, Harvey has asserted a claim for violation of 42 U.S.C. § 1981. In sum, Harvey alleges that his car was stolen on

December 9, 1996, and that his auto-theft claim subsequently was denied by Allstate on the basis that he was an African-American. Specifically, Harvey avers in his complaint that Allstate denied his claim based upon the report of Richard Pacheco, who allegedly determined through a method entitled "key pathway analysis" that the last key used to start Harvey's vehicle was "a key of the 'proper type' that was distributed by the manufacturer of the vehicle." (Compl. at ¶ 29.) Taking that report along with Harvey's own statement that he retained possession of the manufacturer's keys, Allstate denied Harvey's claim for theft and refused to honor its policy of insurance with Harvey. (*Id.* at ¶ 30, 31.) Harvey has taken the position in his complaint that Allstate considers the race of the claimant as "an important factor in determining whether a vehicle was actually stolen or rather whether the insured was falsifying a claim" and thus "subjected" claims made by African-Americans to Pacheco and NETS for key pathway analysis. (*Id.* at ¶ 35, 45.)

On February 13, 2004, Harvey propounded Interrogatory Nos. 10, 11, and 12 to Allstate requesting that it identify the number of auto-theft claims sent to its Special Investigative Unit in Tennessee, the number of those claims that were subsequently

denied, and the race of the insureds of the denied claims.[1] In response, Allstate asserted that it "does not keep records or have any way of determining the number of claims made to Allstate in Tennessee in 1997 that involved stolen vehicles sent to Allstate's SIU unit, the number of claims so referred which were denied, or the race of any claimants or insureds." (Pl.'s Mot. to Compel, Ex. C at 2, ¶ 8.) Nevertheless, Allstate has produced to the plaintiff a list of all claims where Pacheco has investigated an alleged auto-theft claim and has produced a policy number for every auto-theft claim that was referred to Pacheco's company, NETS. (*Id.* at 4.)

Before receiving the plaintiff's interrogatories, the Defendant filed a Motion for Partial Summary Judgment on Harvey's

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[1] Interrogatory No. 10 asks the defendant to "[i]dentify the number of claims made to Allstate in Tennessee in 1997 that involved stolen vehicles that were sent to Allstate's special auto-claims department, which, in 1997, was run by Frank Haliburton." (Pl.'s Mot. to Compel, Ex. C at 10.)

Interrogatory No. 11 asks the defendant, "Of the claims identified in the answer to the Interrogatory directly preceding, identify the number of claims that Allstate subsequently denied." (Pl.'s Mot. to Compel, Ex. C at 10.)

Interrogatory No. 12 asks the defendant, "Of the claims identified in the answer to the Interrogatory directly preceding, identify the race of the claimants in Tennessee in 1997 whose claims were denied and the race of those claimants whose claims were subsequently approved." (Pl.'s Mot. to Compel, Ex. C at 10.)

42 U.S.C. § 1981 claim on January 26, 2004. The disposition of that motion is determinative of whether the information sought by the plaintiff in Interrogatory Nos. 10, 11, or 12 is relevant and thus, discoverable in this case. On this day, this court has entered a report and recommendation on Allstate's Motion for Partial Summary Judgment and has recommended that the defendant's motion be denied as it pertains to Harvey's 42 U.S.C. § 1981 claim. With that recommendation in mind, the court will enter a conditional order on the motion presently before it.

In its opposition to the plaintiff's motion to compel, Allstate argues, among other things, that the information Harvey seeks to compel in the present motion is not the same as that requested in Interrogatory Nos. 10, 11, and 12. This court agrees. Nowhere in Interrogatory Nos. 10, 11, or 12 does Harvey request that Allstate provide him with the *names and addresses* of Tennessee policyholders whose claims for auto-theft were investigated by Pacheco or his company. Harvey's interrogatories only request the *number* of auto-theft claims sent to Allstate's Special Investigative Unit in Tennessee, the *number* of those claims that were denied, and the race of the denied claimants. Allstate has continually represented that it does not have the information the plaintiff seeks and as such, it cannot be compelled to produce that

which does not exist.[2]

The court is not convinced that the production of the names and address of each Tennessee policyholder whose claim was investigated by Pacheco would accurately reveal the statistical information sought in Interrogatory Nos. 10, 11, and 12. Even if the numbers and racial statistics for claim denials sought by the interrogatories perhaps could be obtained from the production of the names and addresses of policy holders whose auto-theft claims were investigated by Pacheco, the plaintiff did not request that information in the interrogatories propounded over seven months ago, and the deadline for doing so has now passed.

Although Allstate contends that it does not keep track of the number of auto-theft claims sent to its Special Investigative Unit in Tennessee, Allstate has already produced a list of all policy numbers where Pacheco or his company investigated an alleged auto-theft claim. A representative for Allstate, Gary Bobo, testified in his deposition that if he had a claim number, he could type that number into his computer and obtain the file on the insured. (Bobo

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[2] In the deposition of Gary Bobo, for instance, he noted that the race of the insured is not noted on an individual's policy and that the only way to find out the race of the insured would be to contact them personally. (Bobo Dep. at 32.) Furthermore, Bobo testified that Allstate does not keep track of the percentage of claims that are sent to the Special Investigative Unit, claims that are denied, or claims that are paid. (*Id.* at 36.)

Dep. at 33.) Therefore, the court finds that Allstate has the capability to determine what portion of the claims referred to Pacheco or his company were subsequently denied, which would answer Interrogatory No. 11 in part. As such, the defendant is directed to produce such information within ten (10) days of the entry of this order. The plaintiff's motion to compel as it pertains to Interrogatory Nos. 10 and 12 are denied on the grounds that Allstate has represented that it does not possess responsive information.

IT IS SO ORDERED this 23rd day of August, 2004.

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DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE