

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 DENYING PLAINTIFF'S FIFTH MOTION TO COMPEL

Before the court is the November 26, 2003 motion filed by the plaintiff, Patricia Jean Disney, to compel the defendant, State Farm Fire and Casualty Company, to produce documents that Disney requested to be produced at the depositions of Lonnie Buie and Jim Swain, the defendant's experts, which were scheduled for December 17 and 18, 2003.¹ The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is denied.

In this lawsuit, filed nearly two years ago on March 5, 2002, Disney seeks payment from State Farm, her homeowner's insurance company, as a result of fire damage to her home. Disney propounded her first set of interrogatories and requests for production of

¹ The court is unaware of whether these two depositions took place as scheduled.

documents, which included expert discovery requests, on March 13, 2002, shortly after the lawsuit was filed. State Farm has responded to Disney's expert interrogatories and has produced non-privileged documents responsive to the expert discovery requests. (State Farm's Mem. in Supp. of Resp. in Opp. to Pl.'s Fifth Mot. to Compel at 2, 3.) In addition, State Farm has provided Disney with detailed reports from its experts regarding their investigations. (*Id.* at 9.)

On March 31, 2003, the court entered an amended scheduling order in this case, extending the deadline for completing discovery, including document production, to May 16, 2003, and establishing August 16, 2003, as the deadline for expert witness depositions. Thereafter, on July 10, 2003, Disney served State Farm with a notice to take the depositions of State Farm's two expert witnesses. Attached to the notice was a list of seventeen items that Disney requested be produced during the depositions.

By letter dated August 8, 2003, State Farm objected to Disney's request for production of documents on the grounds that the discovery was untimely, that the requests were overly broad, unduly burdensome and irrelevant, and that some of the information sought was privileged. Nevertheless, State Farm agreed to produce at the depositions of its experts documents and other items considered by its experts in forming their opinions.

The expert depositions were postponed a number of times and

ultimately scheduled for December 17 and 18, 2003. After receiving State Farm's written objections in August, 2003, Disney took no action to compel production of the requested items until she filed the instant motion to compel on November 26, 2003.

Rule 30(b)(5) of the Federal Rules of Civil Procedure provides that a notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents. FED. R. CIV. P. 30(b)(5). A person not a party may be compelled to produce documents as provided in Rule 45. FED. R. CIV. P. 34(c).

According to the amended scheduling order, Rule 34 document productions were to be completed by May 16, 2003. Thus, to the extent Disney's July 10, 2003 request for production of documents at the depositions of Buie and Swain was made pursuant to Rule 34, the request was untimely because the discovery deadline had expired. In addition, Disney failed to comply with Rule 45 pursuant to which a person not a party may be compelled to produce documents. Moreover, Local Rule 26.1 provides that all discovery shall be completed and all motions in connection with disputed discovery shall be filed no later than the discovery deadline set forth in the scheduling order. Disney's fifth motion to compel was filed after the discovery deadline and thus is untimely.

Accordingly, Disney's fifth motion to compel is denied.

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

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

