

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**TERRI MULLINS and  
WILLIAM MULLINS**

**PLAINTIFFS**

**VERSUS**

**CIVIL ACTION NO. 1:06cv457-LTS-RHW**

**STATE FARM FIRE AND  
CASUALTY COMPANY, *et al.***

**DEFENDANTS**

**ORDER**

This case is before the Court on emergency motion to quash depositions [41] filed October 18, 2006, by Defendant Forensic Analysis and Engineering Corp. Forensic seeks to quash the notices of depositions of its employees Robert Kochan and Wendy Nichols due to the unavailability of counsel for Forensic on the dates and times noticed. A chronology of events is helpful in understanding the present posture of this matter. The following dates and times are gleaned from the docket of the court and the motion pleadings and exhibits of the parties:

- 9/28/2006      Between 2:30 p.m. and 2:38 p.m., counsel for Plaintiffs filed notices of depositions of four State Farm employees in this case.
- 9/29/2006      9:30 a.m. Plaintiffs' counsel received fax correspondence from counsel for Forensic which pointed out that Plaintiffs had not yet even submitted their initial or expert disclosures and that they had set the depositions without any attempt to ascertain the availability of counsel for the Defendants on the dates and times noticed. Forensic warned it would move to quash any attempt by Plaintiffs to take depositions or engage in further discovery until Plaintiffs' initial and expert disclosures were submitted. Forensic requested that Plaintiffs voluntarily cancel the depositions and extend the courtesy of seeking availability of defense counsel before setting any deposition.
- 11:13 a.m. Plaintiffs' counsel filed notice of service of disclosures.
- 4:14 p.m. Forensic's counsel faxed another letter to Plaintiffs' counsel, acknowledging receipt of Plaintiffs' initial disclosures, and further stating, "it appears you have missed our point regarding the depositions that you

unilaterally set. The submittal of your initial disclosures does not satisfy our concerns about the State Farm employee depositions referenced in our letter of earlier today. Again, we ask that you extend to us the courtesy of voluntarily canceling these depositions and re-setting same upon gaining amicable dates. If not, we will be forced to file a Motion to Quash and seek costs for same in connection therewith."

4:52 p.m. Without making any effort to ascertain the availability of opposing counsel or the deponent, Plaintiffs' counsel filed notice of video deposition of Wendy Nichols, a Forensic employee, for October 24, 2006 at 9:00 a.m. in Raleigh, N.C.

4:55 p.m. Without making any effort to ascertain the availability of opposing counsel or the deponent, Plaintiffs' counsel filed notice of video deposition of Robert Kochan, another Forensic employee, for 9:00 a.m. on October 25, 2006 in Raleigh, N.C.

- 9/29/2006 Plaintiffs' counsel sent correspondence to Forensic's attorneys, advising that the Kochan and Nichols depositions had been set, and concluding, "If counselors or their clients are not agreeable to the times and dates of these depositions, please contact Plaintiffs' counsel."
- 10/3/2006 6:05 p.m. State Farm moved to quash the notices of deposition of its employees.
- 10/4/2006 Plaintiffs' counsel filed notice of withdrawal of the notices of deposition of State Farm employees.
- 10/6/2006 Plaintiffs' counsel e-mailed Forensic counsel to "confirm" the deposition dates for its employees. Forensic telephoned to advise that the October 24-25 dates were neither agreeable nor available, and that it would convey available dates to Plaintiffs' counsel as soon as same could be ascertained.
- 10/11/2006 Forensic counsel faxed correspondence to Plaintiffs' counsel advising that Nichols and Kochan are available for deposition December 4-7 and 11-14, 2006, and requesting that Plaintiffs' counsel check their availability on those dates and advise of which dates they preferred to re-notice the depositions.
- 10/13/2006 E-mail from Plaintiffs' counsel states, "we are unable to delay the depositions until December," and that Plaintiffs' counsel would be into trial preparations for trials scheduled to begin in January.

10/18/2006 Forensic filed its emergency motion to quash the Nichols and Kochan depositions noticed for October 24-25, 2006.

Law and Analysis

Rule 30(b), Fed. R. Civ. P., requires that a party desiring to take a deposition give reasonable notice in writing to every other party to the action. This Court is of the opinion that “reasonable notice” involves more than just a period of time. “[N]otice which provides a party the mere ability to physically attend a deposition may be unreasonable. A party is entitled to a deposition date which allows for preparation and **does not conflict with other obligations.**” *Discovery Proceedings in Federal Court*, 3<sup>rd</sup> Ed. (1995), § 9.02. (Emphasis added) Plaintiffs’ counsel has known since the day they noticed the depositions in question, that Forensic’s counsel objected to Plaintiffs’ unilaterally setting depositions without ascertaining the availability of defense counsel. In fact, according to Plaintiffs’ response to the present motion, Plaintiffs had in hand two letters from Forensic’s counsel objecting to precisely that procedure before they set the two depositions at issue. Plaintiffs chose to ignore the clearly stated objection of Forensic’s counsel, made no effort to determine an agreeable date, and proceeded to set the depositions of Forensic’s employees.

The Court finds it incredibly inconsistent that Plaintiffs’ counsel feels justified in rejecting the alternative dates for the depositions due to their other obligations, but would have the Court deny Forensic’s right to urge that the depositions be quashed due to Forensic’s other obligations. The Court is dismayed by the lack of civility and professional courtesy exhibited in this case, all of which have served to waste the time, effort, and presumably money, of the parties and counsel, and take up the Court’s time to resolve a problem which should never have arisen.

The time spent on this matter could have been much better used in simply conferring with opposing counsel to secure agreeable dates on which the depositions could be taken.

The Court is of the opinion that the notices of depositions set for October 24-25, 2006 should be quashed, and re-set for a date on which the deponents and counsel for the parties are mutually available. Lest there be any misunderstanding, the Court is directing Plaintiffs' counsel to confer in good faith with counsel opposite before resetting these depositions. It is therefore,

**ORDERED**, that [41] the motion to quash is granted.

SO ORDERED, this the 20th day of October, 2006.

*/s/ Robert H. Walker*  
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ROBERT H. WALKER  
UNITED STATES MAGISTRATE JUDGE