

CAUSE NO. 198100313719

DEER PARK PAINT & BODY,	§	IN THE JUSTICE COURT
	§	
PLAINTIFF,	§	
	§	PRECINCT 8, PLACE 1
VS.	§	
	§	
STATE FARM AUTOMOBILE	§	
INSURANCE COMPANY,	§	
	§	
DEFENDANT.	§	HARRIS COUNTY, TEXAS

**MOTION FOR PROTECTIVE ORDER TO LIMIT PLAINTIFF’S
DISCOVERY REQUESTS OF STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES State Farm Mutual Automobile Insurance Company (“State Farm”) and files its Motion for Protective Order to Limit Plaintiff’s Discovery Requests of State Farm Mutual Automobile Insurance Company and respectfully states:

**I.
INTRODUCTION**

1. On August 2, 2019, Deer Park Paint & Body (“Plaintiff”) filed suit in the Justice of the Peace Court – Harris County alleging tortious interference with a contract regarding five claims made on different State Farm insurance policies.
2. State Farm filed its Original Answer on August 19, 2019.
3. State Farm filed a Motion for Discovery on August 30, 2019.
4. Plaintiff filed its request for Discovery on September 4, 2019.

5. Plaintiff and State Farm exchanged some discovery prior to the Court ruling on each motion. State Farm objected to some of Plaintiff's various requests as those requests sought Trade Secret, Confidential and Proprietary information.
6. Plaintiff filed a Motion to Compel on October 22, 2019.
7. The Court held a pre-trial hearing on November 13, 2019. The Court granted the parties respective motions to serve discovery. Additionally, The Court heard arguments from Plaintiff and State Farm on the various objections.
8. The Court overruled State Farm's objections on Plaintiff's Motion to Compel Nos. 1, 6 and 7.
9. The Court temporarily denied Requests No. 2, 3, 4 and 5 pending additional documentation from Plaintiff.
10. Plaintiff filed an amended Motion to Compel with letters from the Insurance Commissioner related to Geico, Allstate, USAA and State Farm.
11. The Court granted the amended Motion to Compel on December 5, 2019.
12. On December 12, 2019, State Farm's counsel learned of ongoing communication from Plaintiff to members of the auto body industry during the discovery process. (Exhibit A) In light of this new evidence, State Farm now comes to this Court seeking protection from its previous orders.
13. State Farm files this motion under Texas Rules of Civil Procedure 192.6(a) and seeks protection from producing information that is confidential, proprietary, and trade secret and that due to the harassing nature of the requests they violate the property rights of State Farm. Consequently, State Farm seeks the Court's protection from having to respond to the Court's previous orders relating to discovery.

II. DISCOVERY STANDARD

14. A trial court may issue an order protecting a person affected by discovery from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights. TEX. R. CIV. P. 192.6(b); The court has the authority to limit the scope of discovery based on the needs and circumstances of the case. TEX. R. CIV. P. 192 cmt. 7. According to Texas Rules of Civil Procedure 500.9, discovery is limited to that which the judge considers reasonable and necessary. TEX. R. CIV. P. 500.9(a).
15. To justify a protective order, State Farm must provide sufficient facts to show a particular, specific injury. *Brewer & Pritchard, P.C. v. Johnson*, 167 S.W.3d 460, 466 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).
16. State Farm submits the following exhibits for consideration with its motion:
- i. Exhibit A: Article from Repairer Driven News dated December 13, 2019
 - ii. Exhibit B: State Farm’s Objections and Responses to Plaintiff’s Request for Disclosure, Request for Production and Request for Admissions
 - iii. Exhibit C: Plaintiff’s Motion to Compel for Disclosure, Production and Admissions
 - iv. Exhibit D: Affidavit in Support

III. THE REQUESTS ARE HARASSMENT AND AN INVASION OF PROPERTY RIGHTS OF STATE FARM

17. This Court has jurisdiction over the proceedings pursuant to Tex. R. Civ. P. 500.3 (a) which limits the amount of recovery to no more than \$10,000. Discovery is limited to what the judge considers reasonable and necessary. Tex. R. Civ. P. 500.9 (a). The

discovery request must not be served on the responding party unless the judge issues a signed order. *Id.*

18. A trial court may issue an order protecting a person affected by discovery from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights. TEX. R. CIV. P. 192.6(b). The Court should do so here for a multitude of reasons. The Court previously overruled State Farm’s objections to producing trade secret, confidential, and proprietary information. (See Court’s orders dated November 13, 2019 and December 5, 2019). The Plaintiff specifically stated, “There is nothing confidential, proprietary, business information or trade secrets about anything when you are repairing a vehicle safely.” (Exhibit D, ¶ 5) Plaintiff argued in front of this Court on November 13, 2019, that the purpose for this discovery was not to obtain any trade-secret of State Farm, but to adjudicate this matter. It is clear now, that is not accurate. Plaintiff has been continually updating other members of the auto industry in a direct attempt to affect State Farm’s business property rights. (Exhibit A, page 1 ¶ 3 and 7)

IV. HARASSMENT

19. The general definition of harassment is ‘words, conduct or action that being directed at a specific person annoys, alarms or causes substantial harm’. (Black’s Law Dictionary 4th Ed.) Plaintiff has shown through his communications with other industry professionals that its intent is to cause State Farm financial harm in the future because of this discovery. (Exhibit A, page 1 ¶ 3) Plaintiff stated in an email to other auto body shops dated November 20, 2019, “The good thing is all the documents are in the case file and will remain there for our (industry’s) benefit.” (Exhibit A, page 1 ¶ 3)

- Additionally, Larry Cernosek, the owner of Plaintiff, told the news reporter that his discovery “victory” might offer a playbook for other shops. (*Id.* page 1 ¶ 2)
20. It is clear now that Plaintiff has been in continuous communication with other auto body shops. (*Id.* at ¶ 3 and 7) Plaintiff even suggests that this information is so important to State Farm, that they may offer to pay \$10,000.00 to keep it private. (Exhibit A, page 2, ¶ 7.) State Farm has not once discussed settlement with Plaintiff, and this is complete and utter speculation on Plaintiff’s part. It does further prove the fact that this information sought is trade-secret; Plaintiff acknowledges the competitive nature and value of this information among competitors, and Plaintiff’s sole purpose for these discovery requests is harassment.
21. The Court now knows of two separate correspondences on November 20, 2019 and December 11, 2019 where Plaintiff is providing updates and strategic advice to other auto body shops to harass and attack State Farm’s financial property rights with disclosure of this discovery. (Exhibit A, page 1 ¶ 3 and 7). The Court also is aware of an interview Larry Cernosek gave to the media where he declared victory and admitted this information would benefit other auto body shops, thus harming State Farm. (*Id.*)

**V.
INVASION OF PROPERTY RIGHTS**

22. The requested discovery invades the property rights of State Farm. State Farm contracts with Audatex to license software. (Exhibit D) Audatex controls pricing for labor times and part pricing. (Exhibit D) State Farm has expended substantial resources in developing its own proprietary processes and procedures in relation to its contractual rights. (*Id.*) The value of the materials and information would be diminished, and State Farm would suffer competitive injury if State Farm were required to produce. (*Id.*)

- Plaintiff agrees with this position based on his quotes given to the reporter from Repairer Driven News. (Exhibit A, page 1 ¶ 2 and 3)
23. Plaintiff further seeks information related to State Farm's training and claims procedures. (Exhibit C, Request No. 1). State Farm maintains its training and claims procedural materials it considers proprietary in the strictest confidence. (Exhibit D) State Farm strictly limits and controls access to the training and resource materials so as to prevent their accidental or unauthorized public disclosure. (*Id.*). State Farm has attempted to appease Plaintiff with information related to its request no. 1. (Exhibit B) But, in light of the new evidence that Plaintiff intends to publish the discovery to the public, State Farm cannot and should not be required to produce additional information. Plaintiff continues to argue that State Farm is participating in the vehicle repair industry when State Farm does not repair vehicles. State Farm writes estimates of vehicle damage pursuant to its contractual obligations with its insureds.
24. Plaintiff seeks the entire profile of the estimating software. (Exhibit C, Request No. 3) State Farm treats materials and information pertaining to the profile of State Farm with Audatex as confidential and maintains such confidentiality through several methods. (Exhibit D, ¶ 9). Additionally, Audatex may be harmed if State Farm were required to produce such information and Audatex is not a party to this suit. (*Id.*) The value of State Farm's profile and information described in it would be diminished if it were to be made public as Plaintiff intends (*Id.* at 8 and Exhibit A page 1 ¶ 3).
25. Plaintiff also seeks how State Farm implements the manufacturers specifications for collision repairs into the software (Exhibit C, Requests No. 4 and 5). This requests seeks to obtain State Farm's mental impressions as how it approaches creating

- estimates. (Exhibit D) State Farm has provided all of the estimates it created for these five claims and any additional information requested by Plaintiff is an invasion of State Farm's property rights. (Exhibit B)
26. Plaintiff seeks production of communications between State Farm and Audatex (Exhibit C, Request 6). This invades State Farm's mental and intellectual property rights as to how they address handling of claims. (Exhibit D) This information will directly affect State Farm financially if it were to be disclosed. (*Id.*) Other insurance companies could copy State Farm's process and gain competitive advantage over State Farm. (*Id.*)
27. Plaintiff seeks documents reflecting how State Farm computes the Labor Rates (Exhibit C, Request No. 7). State Farm conducts regular surveys of local body shops in the Houston area. (Exhibit D) State Farm acts in fulfillment of its contractual obligations in conducting these surveys. (*Id.*) As part of the Survey, State Farm promises to protect each auto body shops private information related to their charges and prices (*Id.*). This survey data, if disclosed, would provide Plaintiff with its competitors direct information related to prices. (*Id.*) Plaintiff has indicated this information will financially benefit itself as well as other auto body shops, logically the ones who did not complete the State Farm surveys. (Exhibit A, ¶ 1-3)
28. State Farm has objected to these requests because they seek information that is confidential, proprietary, and trade secret. (Exhibit B) The Court previously overruled these objections, but in light of the new evidence of Plaintiff's motive, State Farm now moves for a protective order stating this information is an invasion of State Farm's property rights. (Exhibit A). The new evidence shows that State Farm's objections

based on trade secrets were valid and Plaintiff's purpose for discovery was harassment and invasion of property rights. (Exhibit A)

29. Texas adopted the Texas Uniform Trade Secrets Act to be effective September 13, 2013. Pursuant to that Act, "trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, process, financial data, or list of actual or potential customers or suppliers, that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. TEX. CIV. P. & REM. CODE § 134A.002(6). This definition is substantially similar to the common law definition Texas previously followed, which was set out in Restatement of Torts § 757. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958) (defining a trade secret under Texas law in accordance with the definition set out in Section 757 of the Restatement of Torts, *i.e.*, any formula, pattern, device or compilation of information which is used in one's business and presents an opportunity to obtain an advantage over competitors who do not know or use it.). In both instances, the definition of trade secret is not limited to purely technical data; rather, a trade secret includes any compilation of information used in one's business that provides an advantage over competitors who do not possess the materials. TEX. CIV. P. & REM. CODE § 134A.002(6). *See also Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1994); *Phillips*, 20 F.3d at 628; *Hyde Corp.*, 314 S.W.2d at 776; *H.E. Butt Grocery Co. v. Moody's Quality Meats, Inc.*, 951 S.W.2d 33, 35 (Tex. App.—Corpus Christi 1997, writ denied).

30. The key part of the definition of trade secret is secrecy, and “the word ‘secret’ implies that the information is not generally known or readily available by independent investigation.” *H.E. Butt Grocery Co.*, 951 S.W.2d at 35; TEX. CIV. P. & REM. CODE § 134A.002(6). *See also American Derringer Corp. v. Bond*, 924 S.W.2d 773, 776 (Tex. App.–Waco 1996, no writ); *see Lucous v. J.C. Kinley Co.*, 376 S.W.2d 336, 338 (Tex. 1964); *Stewart & Stevenson Servs., Inc. v. Serv-Tech, Inc.*, 879 S.W.2d 89, 98 (Tex. App.–Houston [14th Dist.] 1994, writ denied). Accordingly, “when an effort is made to keep material important to a particular business from Competitors, trade secret protection will be available.” *Gonzales v. Zamora*, 791 S.W.2d 258, 265 (Tex. App.–Corpus Christi 1990, no writ); TEX. CIV. P. & REM. CODE § 134A.002(6)(B).
31. It is self-evident that State Farm’s contracts with outside vendors such as Audatex are confidential, proprietary, and trade secret.¹ The terms of those contracts are negotiated separately and are not necessarily the same as one another. State Farm – and the particular vendor– would be harmed in their ability to negotiate with other parties if their competitors were to gain access to the State Farm profile. (Exhibit D) Thus, State Farm (as well as the vendor with which it contracts) has an interest in maintaining, and takes steps to protect, the confidentiality of these agreements, as their terms provide State Farm a competitive business advantage. (*Id.*)
32. The Texas Supreme Court in *Walker v. Packer* recognized that a party has no adequate remedy on appeal when “the trial court erroneously orders the disclosure of privileged information . . . such as . . . trade secrets without adequate protections to maintain the

¹ Because Request 3 asks for the profile of the estimating software, State Farm would be unable to produce the profile without including information that is irrelevant to this cause of action, overbroad, and a violation of Audatex’s privacy rights.

confidentiality of such information.” *Walker*, 827 S.W.2d 833, 843 (Tex. 1992). Therefore, the Court is obligated to take appropriate steps, in light of “the importance of protecting trade secrets through protective orders,” to ensure that State Farm’s trade secrets are protected from unnecessary public disclosure. *See* TEX. CIV. P. & REM. CODE § 134A.006. (“In an action under this chapter, a court should preserve the secrecy of an alleged trade secret by reasonable means. There is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets.”). *See also Peeples*, 734 S.W.2d at 346; *In re Continental General Tire, Inc.*, 979 S.W.2d at 610.

33. State Farm goes to considerable lengths to ensure that the materials requested by Plaintiff remain secret by strictly limiting and controlling access to prevent their accidental or unauthorized public disclosure. (Exhibit B, ¶ 9) Because the materials were developed by State Farm over years of conducting business, uncontrolled disclosure of the requested materials would benefit State Farm’s competitors and State Farm is entitled to protection against that result. (*Id.*)

34. State Farm is now aware of Plaintiff’s motives in seeking its trade secrets and now asks the Court for protection from this discovery. (Exhibit A).

WHEREFORE, PREMISES CONSIDERED, State Farm prays the Court enter an order relieving State Farm from any obligation to further respond to Plaintiff’s discovery requests, and for such other and further relief, in law or in equity, to which it may be entitled.

Respectfully submitted,

/s/ Michael P. Hupf

Michael P. Hupf

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CERTIFICATE OF SERVICE

I hereby certify that on January 3rd, 2020, a true and correct copy of the above and foregoing document has been served upon all counsel of record, in accordance with the Texas Rules of Civil Procedure.

/s/ Michael P. Hupf

Michael P. Hupf


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Texas shop prevails in request for discovery into State Farm estimating, training, definitions

By [John Huetter](#) on December 13, 2019
[Business Practices](#) | [Insurance](#) | [Legal](#) | [Market Trends](#)

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Evidence of the Texas Department of Insurance declaring itself powerless to help on claims disputes prompted [a Harris County small-claims judge to grant a repairer's request for information into State Farm's estimating process.](#)

Larry Cernosek, owner of Pasadena, Tex.-based Deer Park Paint & Body, suggested his victory might offer a playbook for other shops.

“The good thing is all the documents are in the case file and will remain there for our (industry’s) benefit,” he wrote to other industry members in an email Nov. 20 in anticipation of Harris County 8-1 Justice of the Peace Holly Williamson’s ruling.

[Williamson had already granted requests for discovery into five other items](#) this fall over State Farm’s objections. These involved State Farm adjusters’ training, the carrier’s labor rate calculation and its definitions of “reasonable and customary,” “prevailing rate in the market area,” and “pre-accident condition.”

On Dec. 5, she approved the remaining four items after [receiving four letters describing TDI's inability to resolve some fundamental auto claim issues.](#)

Her order grants Cernosek’s requests for State Farm’s estimating profile on the claims at issue and information on the carrier’s inclusion of P-pages and manufacturer procedures into its estimating software.

“The court granted my full request, attached for all the Discovery, what a GREAT DAY,” Cernosek wrote to others in the industry Wednesday.

[Cernosek's experience also reinforces the message advocates of an OEM repair procedure bill conveyed to the Legislature earlier this year:](#) The TDI says it is powerless to act unless lawmakers do.

[Cernosek's shop sued State Farm in August](#) for \$10,000 over allegations of tortious interference with a contract on five claims.

Deer Park alleged State Farm refused to pay a variety of charges, such as an additional \$14 an hour for his sheet metal and refinish rates, \$225 administrative and detailing charges, and operations like denibbing. Each claim was allegedly unfairly denied to the tune of between \$1,031.35-\$2869.47; altogether, they constituted more than \$9,000.

One claim even involved his wife, Cernosek said. State Farm had called her and told her his shop was charging for unnecessary operations, he said.

"Defendant denies generally the material allegations contained in Plaintiff's Original Petition," State Farm attorney Michael Hupf (Brackett & Ellis) [wrote Aug. 19 in an answer to Deer Park Paint & Body v. State Farm.](#)

Contacted about the ruling on Thursday, a spokeswoman confirmed State Farm's policy is generally to refrain from comment on pending litigation, and it had nothing further to share.

Cernosek said it's possible that State Farm will simply tell the court it'll pay the \$10,000 requested in the suit, leading the judge to close the case before the discovery would begin. He said he's been involved in other other cases which played out this way.

[State Farm also requested information from Cernosek](#), and he replied he "would request the same."

Requests for information

Here's the case Deer Park made to Williamson on the items she approved and State Farm's unsuccessful objections:

Granted immediately

DEER PARK: "What training each appraiser and/or work experience repairing a vehicle after an accident. This request has nothing to do with proprietary or business or trade secret information."

STATE FARM: "State Farm objects to this request as vague, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a 'fishing expedition,' in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm's confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff's claims as required by the Texas Supreme Court and Rule of Evidence 507."

DEER PARK: "How does State Farm compute labor rates? Labor rates are set by State Farm without any documents to support the amount, I can't go into a State Farm office and tell the agent how much I want to pay for a policy, how can they have the right to come to my shop and tell me how much they are going to pay to repair a vehicle. There is nothing confidential about rate setting."

STATE FARM: "State Farm objects to this request as vague, confusing, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a 'fishing expedition,' in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm's confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff's claims as required by the Texas Supreme Court and Rule of Evidence 507."

"Subject to and without waiving the foregoing objections, pursuant to State Farm's insurance policy language, State Farm determines the prevailing competitive price in a geographic market by a survey created by State Farm. The process for calculating prevailing competitive price is proprietary, and protected trade secret information that is not discoverable. State Farm further objects to this request in that it seeks information that cannot be disclosed pursuant to confidentiality agreements with third parties; more specifically, when repair shops enter their pricing information on State Farm's survey website, they do so pursuant to State Farm's agreement to keep the information confidential and not to disclose the information outside of State Farm."

DEER PARK: "How does State Farm define 'reasonable and customary,' 'prevailing rate in the market area,' 'pre-accident condition' The form policy provided does not define any of those terms. The terms are used in State Laws for writing estimate so they need to be defined to write an estimate on a vehicle and handle the claims in this case. The information is necessary for a fair adjudication of Plaintiff's claims as required by the Texas Supreme Court and Rule of Evidence 507."

STATE FARM:

'Reasonable and customary': "State Farm objects to this request as vague, ambiguous, specifically regard to the request to 'reasonable and customary' in quotations with no reference to what source the request is referring to, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a 'fishing expedition,' in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm's confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff's claims as required by the Texas Supreme Court and Rule of Evidence 507.

“Subject to and without waiving the foregoing objections, State Farm is unable to identify in what capacity Plaintiff is asking for definition of terms. To the extent applicable, please see the form policy that is attached here and the definitions used in that document.”

‘Prevailing rate’: “State Farm objects to this request as vague, ambiguous, specifically regard to the request to ‘reasonable and customary’ in quotations with no reference to what source the request is referring to, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a ‘fishing expedition,’ in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiffs claims as required by the Texas Supreme Court and Rule of Evidence 507.

“Subject to and without waiving the foregoing objections, State Farm is unable to identify in what capacity Plaintiff is asking for definition of terms. To the extent applicable, please see the a form policy that is attached here and the definitions used in that document.”

‘Pre-accident condition’: “State Farm objects to this request as vague, ambiguous, specifically regard to the request to ‘reasonable and customary’ in quotations with no reference to what source the request is referring to, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a ‘fishing expedition,’ in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not “established that production of State Farm’s confidential, proprietary or business or trade’ secret information is necessary for a fair adjudication of Plaintiffs claim as required by the Texas Supreme Court and Rule of Evidence 507.

“Subject to and without waiving the foregoing objections, State Farm is unable to identify in what capacity Plaintiff is asking for definition of terms. To the extent applicable, please see the a form policy that is attached here and the definitions used in that document.”

Granted after TDI letters

DEER PARK: “The profile of the estimating software is a vital part of the estimating process and the court needs to know the parameters of the labor times and parts. This does not make this an improper request or irrelevant. overbroad, confusing and vague. it has everything to do with writing a complete estimate.”

STATE FARM: “Defendant objects to this discovery request as improper pursuant to Texas Rules of Civil Procedure. Defendant further objects as irrelevant, overbroad, confusing and vague.”

DEER PARK: “The P Page requirements are additional items or repairs that are required to repair a vehicle to pre-accident condition therefore important in the estimating process. This information is available to the public, the repair industry and the software companies to include in their estimating software.”

STATE FARM: “State Farm objects to this request as vague, confusing, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a ‘fishing expedition,’ in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiffs claims as required by the Texas Supreme Court and Rule of Evidence 507.”

DEER PARK: “How does State Farm include the manufacturers specifications for repairing a vehicle after a collision? The specifications of the manufacturer are important so the vehicle is repaired properly and safely to prevent further damage. This information is required to write an accurate estimate and be included in the estimate to put the vehicle in pre-accident condition per the Texas insurance Laws.”

STATE FARM: “State Farm objects to this request as vague, confusing, ambiguous, specifically with regard to the request for ‘manufacturers specifications,’ and overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a ‘fishing expedition,’ in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiffs claims as required by the Texas Supreme Court and Rule of Evidence 507.”

DEER PARK: “What requirements did State Farm ask the software company to include in the estimating software or file use in each claim for this case for writing the estimate. There is nothing confidential, proprietary, business information or trade secrets about anything when you are repairing a vehicle safely.”

STATE FARM: “State Farm objects to this request as vague, confusing, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a ‘fishing expedition,’ in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiffs claims as required by the Texas Supreme Court and Rule of Evidence 507.”

Images:

Larry Cernosek, owner of Pasadena, Tex.-based Deer Park Paint & Body, poses at left with a sign for his company. (Provided by Cernosek)

Harris County, Texas, 8-1 Justice of the Peace Holly Williamson. (Provided by Harris County Justice Courts)

A State Farm agent office is shown in October 2016. (jetcityimage/iStock)

The State Farm Northeast Zone operations center in Concordville, Pa., is shown April 10, 2011. (Micah Youello/iStock)

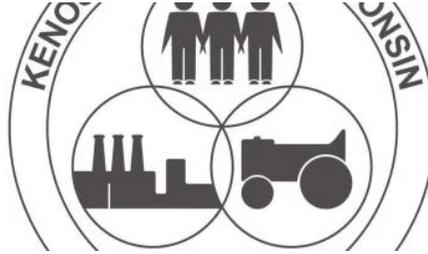
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	§	
STATE FARM AUTOMOBILE	§	
INSURANCE COMPANY,	§	
	§	
DEFENDANT.	§	HARRIS COUNTY, TEXAS

**DEFENDANT’S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO PLAINTIFF’S
REQUEST FOR DISCLOSURE, REQUEST FOR PRODUCTION AND REQUEST FOR
ADMISSIONS**

TO: Plaintiff, Deer Park Paint & Body, by and through pro se Larry Cernosek, Cernosek Enterprises, 4527 Red Bluff Road, Pasadena, Texas 77503.

COMES NOW State Farm Automobile Insurance Company, Defendant in the above-styled and numbered cause, and pursuant to Rules 194, 196 and 198, Texas Rules of Civil Procedure, serves the following supplemental objections and responses to Plaintiff’s Request for Disclosure, Request for Production and Request for Admissions.

Respectfully submitted,

/s/ Michael P. Hupf
Michael P. Hupf
State Bar No. 24102799

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ATTORNEYS FOR DEFENDANT
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2019 a true and correct copy of the above and foregoing document has been served upon all counsel of record in accordance with the Texas Rules of Civil Procedure.

/s/ Michael P. Hupf

Michael P. Hupf

**REQUEST FOR DISCLOSURE, REQUEST FOR PRODUCTION
AND REQUEST FOR ADMISSIONS**

REQUEST NO. 1: The appraiser who wrote the original estimates or supplements on each claim number on this case. What training each appraiser received and/or work experience repairing a vehicle after an accident.

RESPONSE: State Farm objects to this request as vague, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

Subject to and without waiving the above objection:

The following appraisers were used on the identified claims:

Javier Rodriguez – Appraiser – Current Employee
Tammie Gentry – Appraiser – Current Employee
Stacey Crawford – Appraiser – Current Employee
Adalberto Ramirez – Salvage Monitor – Current Employee
Gary Carpenter – Appraiser – No Longer with State Farm
Todd Endo – Appraiser – Current Employee
Josh Cash – Estimator – No longer with State Farm

REQUEST NO. 2: The Industry Software Company used in each of the claims in this case.

RESPONSE: Defendant objects to this discovery request as improper pursuant to Texas Rules of Civil Procedure. Defendant further objects as irrelevant, overbroad, confusing and vague.

Subject to the above objection: State Farm utilizes Audatex for property damage claims.

REQUEST NO. 3: The profile of the estimating software used in writing the estimate on each of the claims in this case.

RESPONSE: Defendant objects to this discovery request as improper pursuant to Texas Rules of Civil Procedure. Defendant further objects as irrelevant, overbroad, confusing and vague.

Subject to the above objection: State Farm holds a profile with the software company.

REQUEST NO. 4: How does State Farm include the P Page requirements into the estimating software used in writing estimates in this case?

RESPONSE: State Farm objects to this request as vague, confusing, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

REQUEST NO. 5: How does State Farm include the manufacturers specifications for collision repair in the estimating software used in writing estimates?

RESPONSE: State Farm objects to this request as vague, confusing, ambiguous, specifically with regard to the request for “manufacturers specifications,” and overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

REQUEST NO. 6: What requirements did State Farm ask the software company to put into the estimating software or profile used in each claim for this case for writing the estimates?

RESPONSE: State Farm objects to this request as vague, confusing, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

REQUEST NO. 7: How does State Farm compute the labor rates in the estimates in this case for all the claims and the documents to back it up?

RESPONSE: State Farm objects to this request as vague, confusing, ambiguous, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is

necessary for a fair adjudication of Plaintiff's claims as required by the Texas Supreme Court and Rule of Evidence 507.

Subject to and without waiving the foregoing objections, pursuant to State Farm's insurance policy language, State Farm determines the prevailing competitive price in a geographic market by a survey created by State Farm. The process for calculating prevailing competitive price is proprietary, and protected trade secret information that is not discoverable. State Farm further objects to this request in that it seeks information that cannot be disclosed pursuant to confidentiality agreements with third parties; more specifically, when repair shops enter their pricing information on State Farm's survey website, they do so pursuant to State Farm's agreement to keep the information confidential and not to disclose the information outside of State Farm.

REQUEST NO. 8: Under the Texas Insurance Code 1952.301, it states an insurer may not (1) specify the brand, type, kind, age, vendor, supplies, or condition of parts or products that may be used to repair the vehicle. State Farm has done this on every estimate in this case, WHY, as it is against the Insurance Code 1952.301?

RESPONSE: State Farm objects to this request as vague, and ambiguous. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, State Farm's listing of parts and part numbers or vendor reference information are used to support the amount of State Farm's payment and to provide information to the repairer on where these parts can be sourced. The repairer and the customer decide who to purchase the parts from. State Farm does not dictate the specific vendor, supplier or part to be used.

REQUEST NO. 9: Under the Texas Insurance Code 1952.307(1) and (2), was the insured or claimant in any claim on this case notified of any limitation or written consent described in Section 1952.301(a)?

RESPONSE: State Farm objects to this request as vague, and ambiguous. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objections, State Farm's listing of parts and part numbers or vendor reference information are used to support the amount of State Farm's payment and to provide information to the repairer on where these parts can be sourced. The repairer and the customer decide who to purchase the parts from. State Farm does not dictate the specific vendor, supplier or part to be used.

REQUEST NO. 10: How does State Farm define "reasonable and customary"?

RESPONSE: State Farm objects to this request as vague, ambiguous, specifically regard to the request to "reasonable and customary" in quotations with no reference to what source the request is referring to, overly broad in scope and time, and therefore unduly burdensome, constituting

nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

Subject to and without waiving the foregoing objections, State Farm is unable to identify in what capacity Plaintiff is asking for definition of terms. To the extent applicable, please see the form policy that is attached here and the definitions used in that document.

REQUEST NO. 11: How does State Farm define “prevailing rate in the market area”?

RESPONSE: State Farm objects to this request as vague, ambiguous, specifically regard to the request to “reasonable and customary” in quotations with no reference to what source the request is referring to, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

Subject to and without waiving the foregoing objections, State Farm is unable to identify in what capacity Plaintiff is asking for definition of terms. To the extent applicable, please see the a form policy that is attached here and the definitions used in that document.

REQUEST NO. 12: How does State Farm define “pre-accident condition”?

RESPONSE: State Farm objects to this request as vague, ambiguous, specifically regard to the request to “reasonable and customary” in quotations with no reference to what source the request is referring to, overly broad in scope and time, and therefore unduly burdensome, constituting nothing more than a “fishing expedition,” in violation of the letter and spirit of discovery law in the State of Texas. Further, the request seeks information that is not relevant nor is it reasonably calculated to lead to the discovery of admissible evidence. This request seeks confidential, proprietary, business information and trade secrets. State Farm further objects to this request because Plaintiff has not established that production of State Farm’s confidential, proprietary or business or trade secret information is necessary for a fair adjudication of Plaintiff’s claims as required by the Texas Supreme Court and Rule of Evidence 507.

Subject to and without waiving the foregoing objections, State Farm is unable to identify in what capacity Plaintiff is asking for definition of terms. To the extent applicable, please see the a form policy that is attached here and the definitions used in that document.

RECEIVED
JOLLY WILLIAMSON
JP 8 1 HARRIS COUNTY
2019 OCT 22 PM 3:29

Case Number: 198100313719

DEER PARK PAINT & BODY	§	IN THE JUSTICE OF THE PEACE
Plaintiff	§	COURT
vs.	§	
STATE FARM AUTOMOBILE	§	PRECINCT 8, PLACE 1
INSURANCE COMPANY	§	
Defendant	§	HARRIS COUNTY, TEXAS
	§	

MOTION TO COMPEL FOR DISCLOSURE, PRODUCTION, AND ADMISSIONS

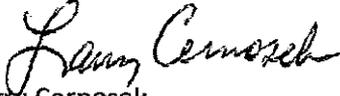
TO THE HONORABLE JUDGE OF SAID COURT:

Deer Park Paint & Body, Plaintiff request the court to compel State Farm Insurance Company to produce discovery as requested:

1. Request No.1. What training each appraiser and/or work experience repairing a vehicle after an accident. This request has nothing to do with proprietary or business or trade secret information.
2. Request No. 3. The profile of the estimating software is a vital part of the estimating process and the court needs to know the parameters of the labor times and parts. This does not make this an improper request or irrelevant, overbroad, confusing and vague. It has everything to do with writing a complete estimate.
3. Request No.4. The P Page requirements are additional items or repairs that are required to repair a vehicle to pre-accident condition therefore important in the estimating process. This information is available to the public, the repair industry and the software companies to include in their estimating software.
4. Request No.5. How does State Farm include the manufacturers specifications for repairing a vehicle after a collision? The specifications of the manufacturer are important so the vehicle is repaired properly and safely to prevent further damage. This information is required to write an accurate estimate and be included in the estimate to put the vehicle in pre-accident condition per the Texas Insurance Laws.
5. Request No. 6. What requirements did State Farm ask the software company to include in the estimating software or profile used in each claim for this case for writing the estimate. There is nothing confidential, proprietary, business information or trade secrets about anything when you are repairing a vehicle safely.
6. Request No.7. How does State Farm compute labor rates? Labor rates are set by State Farm without any documents to support the amount, I can't go into a State Farm office and tell the agent how much I want to pay for a policy, how can they have the right to come to my shop and tell me how much they are going to pay to repair a vehicle. There is nothing confidential about rate setting.
7. Request No. 10, 11,12. How does State Farm define "reasonable and customary", "prevailing rate in the market area", "pre-accident condition" The form policy provided does not define any of those terms. The terms are used in State Laws for writing estimates so they need to be defined to write an estimate on a vehicle and handle the claims in this case. The information is necessary for a fair adjudication of Plaintiff's claims as required by the Texas Supreme Court and Rule of Evidence 507.

Respectfully Submitted,
Cernosek Enterprises

By



Larry Cernosek

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LCWRECKER@COMCAST.NET

1 of 2

Certificate of Service

This is to certify that on October 22, 2019 a true and correct copy of the foregoing was served on defendants Attorney by email, bccampbell@belaw.com