



1 **I. THE BERRY DECLARATION**

2 In light of various assertions made by State Farm and Liberty Mutual in their summary  
3 judgment papers, the Berry Declaration sets forth the following categories of discovery Plaintiffs  
4 seek:

- 5 1. State Farm and Liberty Mutual’s claims regarding the adoption of policies  
6 permitting use of non-OEM parts in estimates provided to their customers;
- 7 2. The use of non-OEM parts to repair Defendants’ customers’ vehicles;
- 8 3. Whether non-OEM parts are of like kind and quality as OEM parts;
- 9 4. Defendants’ involvement with CAPA;
- 10 5. Information concerning CAPA’s funding and control by insurance companies,  
including Defendants; and
- 11 6. Defendants’ agreements with repair shops.

12 The Berry Declaration also states that discovery concerning the following remains  
13 outstanding:

- 14 1. What non-OEM and OEM parts actually are provided under Defendants’ policies;  
15 and
- 16 2. Related litigation involving crash parts and Defendants’ involvement with CAPA.

17 The Berry Declaration further seeks to depose each of Defendants’ witnesses that has  
18 submitted a declaration in support of the previously filed summary judgment motions, and  
19 further requests all of the documents and information that any witness reviewed in the process of  
20 providing their declarations. The witnesses include the following:

- 21 1. Maureen Willet;
- 22 2. Warren Farrar;
- 23 3. Anthony Ferrara;
- 24 4. John Hubert;
- 25 5. James Brandt;
- 26 6. Craig Isaacs;
- 27 7. Ina Becraft; and
- 28 8. Brian O’Connor.

1 **II. PLAINTIFFS' PROPOSAL**

2 Plaintiffs propose serving 10 document requests and 10 interrogatories each on State  
3 Farm and Liberty Mutual regarding a portion of the categories identified in the Berry  
4 Declaration. Plaintiffs describe this portion as follows:

- 5 1. State Farm and Liberty Mutual's claims that they each adopted a policy not to  
6 specify the use of non-OEM crash parts, and State Farm's assertion in its Reply  
7 Memorandum that "State Farm allows shops to use non-OEM crash parts only  
8 when specifically requested by the customer."
- 9 2. State Farm's claim in its Motion for Summary Judgment that: "CAPA derives  
10 revenue from having its stickers affixed to CAPA-certified parts . . . It would,  
11 therefore, be self-defeating for a conspiracy aimed at promoting use of CAPA-  
12 certified parts to also promote two kinds of directly competing parts," and Liberty  
13 Mutual's claims that plaintiffs' allegation that Liberty Mutual continues to  
14 support CAPA is a "shell game."
- 15 3. State Farm's assertion in its Motion for Summary Judgment that certain decisions  
16 were made by State Farm unilaterally, and entirely independent of the other State  
17 Farm and Liberty Mutual (including CAPA).
- 18 4. State Farm's assertion in its Reply Memorandum that certain allegations in the  
19 TAC concerning "inferior" parts are "factually unsupported," and Liberty  
20 Mutual's assertion that "plaintiffs' allegation that salvage parts are inferior rests  
21 on pure speculation."
- 22 5. State Farm witness Warren Farrar's statement that "State Farm believes the  
23 presence of non-OEM parts . . . reduced the cost of insurance."
- 24 6. State Farm's assertion that the term "competitively priced parts" in its agreements  
25 with repair shops means "buying from a source that charges a market price for  
26 that particular part," regardless of the type of part.
- 27 7. State Farm's assertion that the allegations described at pages 6:1-22, 14:12-18,  
28 and 18:12-19:11 of Plaintiffs' opposition to State Farm's motion for Summary  
Judgment are "not evidence," and that Plaintiff "must seek relief under Rule  
56(d)" to back them up.
8. Liberty Mutual's assertions that "[i]f the insured wants an OEM sheet metal crash  
part and it is available, that part is installed," and that "Liberty Mutual  
implemented a company-wide policy to 'pay for OEM structural sheet metal crash  
parts when available.'"
9. Liberty Mutual's assertion in its Motion for Summary Judgment that "Liberty  
Mutual" could not realize increased profits by excluding providers of OEM  
policies."

26 Plaintiffs further propose to take depositions of the individuals identified in the Berry  
27 Declaration, and offer a schedule by which all of its requested discovery be completed.

1 **III. STATE FARM’S PROPOSAL**

2 State Farm states that Plaintiffs are entitled to only the following two categories of  
3 discovery: (1) whether during the putative class period State Farm has required use of CAPA-  
4 certified crash parts; and (2) whether there is any economic plausibility to Perez’s assertion that  
5 the conspiracy to misrepresent the quality of new, non-OEM, CAPA-certified crash parts also  
6 included misrepresenting the quality of directly competing “Recycled” OEM parts.

7 State Farm asserts that Plaintiffs have not sought discovery regarding the second category, so  
8 only the first category of discovery is truly at issue.

9 State Farm notes that it previously produced California rate filings for the period from  
10 2002 to the present along with Perez’s policy file. State Farm also notes that it has produced an  
11 exemplar of its California insurance policies and copies of each of the forms of agreement that  
12 State Farm has had with California body shops during the putative class period. State Farm  
13 pledges that it will produce the 1999 memo announcing the policy of not specifying non-OEM  
14 crash parts as well as any follow-up memos or reminders.

15 To satisfy fully its obligation under Rule 56(d) and the March 23 order, State Farm  
16 proposes a production of a sampling of its estimates to determine whether what is actually  
17 written on the estimates is consistent with State Farm’s claim that it does not specify or  
18 encourage third-party body shops to specify non-OEM crash parts and that such parts are used  
19 only in relatively rare situations. According to State Farm, these situations include where the  
20 customer wants her car back as soon as possible and a non-OEM crash part is available sooner  
21 than an OEM crash part. State Farm proposes to use a randomized sample of “several hundred”  
22 estimates.

23 Under the State Farm proposal, other discovery would be held in abeyance until the  
24 sampling is completed and the parties are able to review the results.

25 **IV. LIBERTY MUTUAL’S PROPOSAL**

26 Liberty Mutual states that its standard claims procedures require estimates based on the  
27 use of OEM crash parts. Therefore, the only discovery to which Plaintiffs are entitled is Liberty  
28 Mutual’s standard claims procedures.

1 Liberty Mutual notes that it has produced its auto appraisal manual (which instructs  
2 Liberty Mutual appraisers in their duties) and its facility appraisal manual (which instructs body  
3 shops) for the class period.

4 To fully satisfy its obligations under Rule 56(d) and the March 23 order, Liberty Mutual  
5 proposes producing a random sample of appraisals and payments from 120 California auto  
6 property damage claim files spread across the class period demonstrating compliance with its  
7 standard procedures.

8 Liberty Mutual further proposes to tender Brian O'Connor for deposition to testify  
9 regarding Liberty Mutual's standard OEM crash parts claims procedures during the class period.

## 10 **V. CONCLUSION**

11 Judge Ware has made it clear that discovery on the range of issues in the Berry  
12 Declaration needs to move forward. Having reviewed the parties' proposals and considered the  
13 arguments of counsel, the court orders the following:

- 14 1. No later than April 29, 2011, Plaintiffs may serve State Farm and Liberty Mutual  
15 no more than 10 document requests and 10 interrogatories each on the issues set  
16 forth in Section II, 1-9 above;
- 17 2. No later than May 27, 2011, State Farm and Liberty Mutual shall respond to  
18 those requests and produce a statistically valid sample of all documents, including  
19 estimates, appraisals and payments, responsive both the requests above, as well as  
20 Plaintiffs' Document Request Nos. 1(a)-(d), 2(a)-(d), 3, 4, 5, 8, 9, 10, 11, 12, 17,  
21 18, 19-21, 25, 26, 27. If State Farm and Liberty Mutual wish to avoid a further  
22 order compelling production of all documents responsive to these requests, then  
23 each must stipulate in writing that the sample produced is statistically valid and  
24 representative of all responsive documents, and that it will not argue that  
25 Plaintiffs showing under requirements of Federal Rule of Civil Procedure 23 or  
26 56 is deficient based on any responsive documents not produced as part of the  
27  
28

1 sample.<sup>2</sup>

2 3. No later than May 27, 2011, State Farm and Liberty Mutual shall respond to  
3 Plaintiffs' Interrogatory No. 18.

4 4. No later than May 27, 2011, Liberty Mutual shall produce California-specific,  
5 disaggregated data from Audatex regarding the prices for OEM and non-OEM  
6 crash parts by vehicle model.<sup>3</sup>

7 5. No later than July 3, 2011, Plaintiffs may depose any of State Farm or Liberty  
8 Mutual's witnesses who provided declarations in support of State Farm and  
9 Liberty Mutual's respective summary judgment motions.

10 Finally, the court finds it necessary to require the parties, including Defendants GEICO  
11 General Insurance Company and Allstate Indemnity Company, to appear monthly to present any  
12 outstanding discovery disputes, as follows.<sup>4</sup>

13 Rather than by following the procedures set forth in Civ. L.R. 7-1 *et seq.*, a party seeking  
14 to compel discovery or secure a protective order shall file a notice of a one-hour hearing for the  
15 last Friday of each month (beginning April 29, 2011) at 10AM (exceeding no more than 3 pages  
16 in letter-brief format) on the preceding Tuesday of that same week. The party to whom the  
17 request is directed may file a response (also not to exceed 3 pages in letter-brief format) by the  
18 end of business on Wednesday of that same week. In advance of filing any  
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23  
24 <sup>2</sup> See Advisory Committee Notes to 2006 Amendments to Rule 26(b)(2) (“[T]he parties  
25 may need some focused discovery, which may include sampling of the sources, to learn more  
26 about what burdens and costs are involved in accessing the information, what the information  
27 consist of, and how valuable it is for the litigation in light of information that can be obtained by  
28 exhausting other opportunities for discovery.”); *Kipperman v. Onex Corp.*, 260 F.R.D. 682 (N.D.  
Ga. 2009). *Cf. Ralston v. Mortgage Investors Group, Inc.*, Case No. 08-0536 JF (PSG), Docket  
No. 181, *aff’d*, Docket No. 228.

<sup>3</sup> All other relief requested in Plaintiffs' motion to compel is denied.

<sup>4</sup> See Docket No. 298.

1 request with the court, the parties shall meet and confer.<sup>5</sup>

2 IT IS SO ORDERED.

3 Dated: April 22, 2011



5 PAUL S. GREWAL  
United States Magistrate Judge

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<sup>5</sup> See Civ. L.R. 1-5(n).