

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**DAVID AND VENITA LACROIX**

**CIVIL ACTION**

**VERSUS**

**NO. 09-0609**

**STATE FARM FIRE AND CASUALTY  
INSURANCE COMPANY**

**SECTION "K"(4)**

**ORDER AND OPINION**

Before the Court is the "Motion to Dismiss All Of Plaintiffs' Claims" filed on behalf of defendant State Farm Fire and Casualty Company ("State Farm") (Doc. 21). Having reviewed the pleadings, memoranda, and relevant law, the Court, for the reasons assigned, DENIES the motion.

**BACKGROUND**

Plaintiffs David and Venita LaCroix filed suit against State Farm seeking damages based on their allegations that their home, which State Farm insured under a homeowner's policy, sustained damages due to Hurricane Katrina, for which they had not been compensated. On May 18, 2009, State Farm propounded interrogatories and requests for production of documents upon plaintiffs. Thereafter on June 25, 2009, State Farm propounded a "First Supplemental Request for Production of Documents upon the LaCroixs. Plaintiffs failed to respond to the discovery despite State Farm granting them a twenty (20) day extension within which to respond to the discovery.

Ultimately State Farm filed a "Motion to Compel Plaintiffs' Responses to Interrogatories and Requests for Production" (Doc. 13); plaintiffs did not file an opposition to the motion. Thereafter, United States Magistrate Judge Karen Wells Roby granted State Farm's motion to compel and ordered the LaCroixs to "provide complete responses to State Farms Revised Interrogatories and Requests for Production of Documents no later than [November 21, 2009]."

(Doc. 18). When plaintiff's failed to comply with Magistrate Roby's order, State Farm filed this motion to dismiss with prejudice all of plaintiffs' claims pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure.

Plaintiffs responded to State Farm's discovery on December 15, 2009, the same date they filed their opposition to State Farms' motion to dismiss.

#### LAW AND ANALYSIS

Federal Rule of Civil Procedure 37(b)(2) "empowers a district court to impose 'just' sanctions on parties who disobey a discovery order." *F.D.I.C. v. Conner*, 20 F.3d 1376, 1380 (5<sup>th</sup> Cir. 1994). Dismissal of an action is one of the permissible sanctions identified in Rule 37(b)(2). However, the Fifth Circuit has "repeatedly emphasized that a dismissal with prejudice is a 'draconian' remedy, or a 'remedy of last resort.'" *Nissho-IWAI American Corporation v. Kline*, 845 F.2d 1300, 1304 (5<sup>th</sup> Cir. 1988). Dismissal of a case may be ordered as a sanction for violating a discovery order only when the following conditions are met: 1) when the refusal to comply results from willfulness or bad faith and is accompanied by a clear record of delay or contumacious conduct; 2) when the violation of the discovery order is attributable to the client, as opposed to counsel; 3) when the non-compliant party's conduct substantially prejudices the opposing party; and 4) when a less drastic sanction would not substantially achieve the desired deterrent effect. *F.D.I.C. v. Conner*, 30 F.3d at 1380-81, citing *Coane v. Ferrara Pan Candy Co.*, 898 F.2d 1030, 1032 (5<sup>th</sup> Cir. 1990).


The requisite conditions for dismissal of the suit are not present. Even assuming that the failure to comply with the discovery order resulted from willfulness or bad faith, this single violation of a discovery order does not establish a clear record of delay or contumacious conduct.

Additionally, there is no indication in the record that the violation of the discovery order resulted from any action or inaction on the part of the LaCroixs. Nor is the Court persuaded that plaintiff's failure to comply with the order substantially prejudiced State Farm.

Moreover, the Court concludes that a warning will suffice to deter plaintiffs from violating any future Court orders. The Court hereby notifies both the LaCroixs and all of their counsel, that sanctions will be imposed for any future violation of a Court order. Accordingly,

**IT IS ORDERED** that the "Motion to Dismiss All of Plaintiffs' Claims" filed on behalf of defendant State Farm Fire and Casualty Company (Doc. 21) is DENIED .

New Orleans, Louisiana, this 21<sup>st</sup> day of December, 2009.



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STANWOOD R. DUVAL, JR.  
UNITED STATES DISTRICT JUDGE