

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 11-20247-CIV-ALTONAGA/Simonton**

**2000 ISLAND BOULEVARD  
CONDOMINIUM ASSOC., INC.,**

Plaintiff,

vs.

**QBE INSURANCE CORP.,**

Defendant.

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**ORDER**

**THIS CAUSE** came before the Court on Defendant, QBE Insurance Corporation's ("QBE[']s") Motion to Compel Answers to Interrogatories [ECF No. 34], and QBE's Motion to Compel Response to Request for Production [ECF No. 35], both filed on June 30, 2011. While the Court normally leaves the resolution of discovery questions in the capable hands of the assigned Magistrate Judge, given that Judge Simonton is out this week, the Court undertakes the task in order to prevent any delay to the pre-trial schedule.<sup>1</sup>

**A. Interrogatories**

In this suit brought by 2000 Island Boulevard Condominium Association, Inc. ("2000 Island Boulevard"), a condominium association, against its commercial property insurer seeking damages for property damage allegedly caused by Hurricane Wilma<sup>2</sup> (the "Hurricane"), QBE seeks answers to the following interrogatories: No. 2, which asks 2000 Island Boulevard to provide detailed

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<sup>1</sup> Discovery closes on September 30, 2011.

<sup>2</sup> Hurricane Wilma struck South Florida in October 2005.

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information about each building component included in Plaintiff's claim; No. 5, which asks for names and addresses of unit owners, management, and maintenance personnel; and No. 7, which asks for information about persons who inspected and evaluated the property for damage. 2000 Island Boulevard objects because "all three areas of inquiry are premature because they concern Plaintiff's ongoing expert investigation." (Resp. 1 [ECF No. 39]). Plaintiff advises it will produce its expert reports on or before September 2, 2011. Furthermore, Plaintiff objects to questions concerning pre-existing conditions as "red-herrings," on grounds of relevancy, and as overly burdensome to the extent they seek information going as far back as 1995. (*Id.* 2).

The Court agrees with QBE and consequently overrules Plaintiff's objections. As to interrogatory No. 2, which asks Plaintiff to disclose how the building components were damaged, whether the damaged components were repaired or replaced, who repaired or replaced them, the dates and costs of such repair or replacement, the age or conditions of the components prior to the Hurricane, and whether there were discussions concerning repairing or replacing those components before the Hurricane struck, the questions seek factual information. Similarly, No. 7 asks for information concerning the persons who made inspections and evaluations of such areas. Plaintiff's production of a 251-page estimate of damages does not answer all of the questions posed in interrogatories 2 and 7, and Plaintiff cannot hide behind an incomplete expert report to deny QBE the information it seeks. To the extent these interrogatories seek factual information rather than an attorney's legal reasoning or theories, Plaintiff must respond to them fully. *See, e.g., Upjohn Co. v. United States*, 449 U.S. 383, 395 (1981) ("The [attorney-client] privilege protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated

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with the attorney.”). As QBE notes, Plaintiff filed a Sworn Proof of Loss on January 14, 2011, claiming damages amounting to \$9,905,815.57. (*See* Reply 2 [ECF No. 40]). Plaintiff must necessarily have completed a factual investigation before submitting such a claim, and Defendant should not be forced to wait until the exchange of expert reports to obtain it.

Further, the Court disagrees with Plaintiff that information sought going as far back as 1995 is overly burdensome and irrelevant to a claim of damages dated 2005. First, Plaintiff does not describe the burden in answering the question. The party objecting on this ground has the burden of explaining why it is so. *See United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*, 235 F.R.D. 521, 523–24 (D.D.C. 2006). Second, QBE has raised affirmative defenses of defective construction, repair or maintenance, and is challenging Plaintiff’s experts’ claims that invisible hurricane damage to building components has necessitated repair or replacement. (*See id.*). “Limiting the scope of the request to a particular time period would prevent Defendant from obtaining information regarding historical problems with the relevant building components, which may date back to the time of construction or installation.” *Meridian of Palm Beach Condo. Assoc., Inc. v. QBE Ins. Corp.*, No. 06-81108-Civ-Ryskamp, at 4 (S.D. Fla. Jan. 22, 2008) [ECF No. 41]. Consequently, as to interrogatory No. 5, requesting names, Plaintiff is to provide responsive information.

**B. Production of Documents**

Plaintiff has objected to a number of requests for documents on grounds of privilege, its-yet-to-be-produced expert reports, burden, and relevance pertaining to pre-existing conditions present on the property. Regarding the assertion of work-product privilege to its experts’ files, the doctrine

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protects an attorney's mental impressions or legal theories, but not the underlying facts of a dispute. *Itex, Inc. v. Workrite Unif. Co.*, No. 08 C 1224, 2011 WL 1224920, at \*1 (N.D. Ill. Mar. 31, 2011). Furthermore, Plaintiff has failed to produce a privilege log as required by Rule 26(b)(5); hence, this objection is without merit. *See, e.g., United States ex rel. Pogue*, 235 F.R.D. at 523 (rejecting objections based on privilege due to failure to provide privilege log). Again, Plaintiff cannot deny fact discovery simply because its experts have not completed their reports, and consequently Plaintiff must produce documents containing factual information responsive to the requests.


As to the objection raised on the ground of undue burden, the party objecting on this ground bears the burden of explaining how the request is burdensome, and Plaintiff has failed to do so. *See id.* 523–34. Hence, this objection is also overruled. Plaintiff's objection on the ground of the "concurrent cause" doctrine, which states when one covered cause joins with excluded causes the entire loss is covered (*see* Doc. Resp. 2 [ECF No. 36] and cases cited), is not a sufficient ground to deny QBE discovery about historical problems with the building components comprising Plaintiff's claim. This objection is overruled.

Accordingly, it is

**ORDERED AND ADJUDGED** that Defendant, QBE Insurance Corporation's Motion to Compel Answers to Interrogatories [ECF No. 34] and QBE's Motion to Compel Response to Request for Production [ECF No. 35] are **GRANTED**. Plaintiff shall have until August 5, 2011 to comply.

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**DONE AND ORDERED** in Chambers at Miami, Florida, this 25th day of July, 2011.

  
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**CECILIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

cc: counsel of record