

tracking THE 2015 AMENDMENTS TO THE CIVIL RULES

Labrier an example of new proportionality rules at work

IN December 2015, the amendments to Federal Rule of Civil Procedure 26(b) took effect. These amendments, highlighted in *Judicature's* Winter 2015 issue, moved the proportionality provisions from Rule 26(b)(2)(C)(iii), as a *limit* on discovery, to Rule 26(b)(1), as part of the definition of the *scope* of discovery. To be discoverable, information now must be relevant, nonprivileged, and proportional to the needs of the case. The Committee Note to the amended Rule 26(b)(1) emphasized that courts should be more engaged in the discovery process under the amended rules — a point echoed by Chief Justice Roberts in his 2015 Year-End Report.

Since December, opinions in more than 100 reported cases in federal court have addressed the amended Rule 26(b)'s discovery requirements. (The Duke Center for Judicial Studies is collecting, categorizing, and publishing these orders at <http://www.law.duke.edu/judicialstudies/conferences/publications>.) *Labrier v. State Farm Fire & Casualty Co.*, No. 2:15-cv-04093-NKL, 2016 WL 2689513 (W.D. Mo. May 9, 2016) is one such case. The plaintiff, Amanda Labrier, submitted a claim for payment under her homeowner's policy to her insurance company, State Farm, for hail damage to her home. She asserted that State Farm improperly reduced her insurance payment by depreciating the cost of the labor needed to repair the damage to her home. Labrier filed a putative class action in state court against State Farm on behalf of all homeowners who had received payments that had been reduced by depreciating labor costs.

After the case was removed to federal court, Labrier attempted to streamline discovery. She asked State Farm to provide her with data fields that were available in its electronic databases. State Farm refused. Labrier then deposed two database software engineers, who testified that State Farm maintained a list of the requested data fields on their network server and that the insurer could easily gather the data fields in an Excel spreadsheet. State Farm contin-

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ued to refuse Labrier's request to access its electronic claims database, arguing that its claim system was highly confidential and included trade secrets.

The court appointed a special master to handle discovery matters. The special master held six telephone conferences and in-person hearings on the e-discovery dispute. The parties also filed written briefs on the issue.

Instead of ordering production of the requested documents under Rule 34, the special master determined that an alternative discovery method could be equally effective without raising confidentiality concerns. The special master ordered the insurer to answer four separate interrogatories under Rule 33. The interrogatories requested information concerning the total amount of labor depreciation that was actually withheld for each claim, the date that labor depreciation was first withheld, a list of the claims for which State Farm eventually paid part or all of the withheld labor depreciation costs, and the affirmative defenses that State Farm intended to assert against Labrier's claims.

Because State Farm's databases were confidential, the answers to the interrogatories were Labrier's sole available source of information. Nonetheless, State Farm moved the district court to vacate the special master's proposed order, asserting that, despite its relevance, responses to the interrogatories would require unreasonably expensive searches of multiple databases.

The district court affirmed the special master's order, finding that the discovery was relevant and proportional to the needs of each party. Applying the proportionality analysis in the amended Federal Rule of Civil Procedure 26(b), the court explained that the discovery issues were at the "very heart" of the litigation.

The district court also determined that the burden and expense of State Farm's answering the interrogatories did not outweigh the benefits of the discovery. The interrogatories were relevant: The information went "directly to central issues in the case" and concerned "class members and damages, discovery that is routinely provided in class action cases." Absent a contrary showing by State Farm, the court found it "incredible" that there was "no cost-effective way to match up information in one database with the information in another," especially since "data sorting is what computers do in much higher levels in very short amounts of time."

Because State Farm asserted confidentiality over its network and refused to provide Labrier the lists of requested data fields, it would have to bear the additional costs of searching the electronic databases for answers to the interrogatories, the only other alternative source of information. The court also concluded that another proportionality factor supported its ruling: State Farm's resources outmatched Labrier's resources. Further, the court noted that State Farm's discovery search could inure to its own benefit by leading to affirmative defenses.

The *Labrier* court's balancing of the proportionality factors is one example of how courts are applying the new civil rules. How district courts will apply the new amended rules to different situations is an evolving process — a process in which courts are taking new and innovative steps to solve existing discovery disputes.

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