

IN THE STATE COURT OF BIBB COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
CLERK OF STATE COURT  
BIBB COUNTY, GEORGIA  
**19-SCCV-090337**  
SFL  
JUN 29, 2020 04:14 PM

██████████  
Plaintiff,

v.  
██████████  
Defendant.

CIVIL ACTION FILE NO. 19-SCCV-090337  
*Patricia M. Graves*  
Patricia M. Graves, Clerk of State Court  
Bibb County, Georgia

**ORDER TO COMPEL DISCOVERY**

██████████ ("Plaintiff") filed a Motion to Compel Progressive to Produce Recorded Statement on January 24, 2020 seeking the recorded statement of ██████████ ("Defendant") taken by Progressive Insurance Company. Defendant objected on the grounds that it was work product prepared in anticipation of litigation. The Court heard argument on June 16, 2020. At the hearing, the court granted leave for Defendant to supplement the record with the date, time, and circumstances of Defendant's statement. Having considered the parties arguments, briefs and the record, the court makes the following findings.

The Court's first inquiry is whether Defendant's statement taken by Progressive was made in the ordinary course of business (therefore not protected as work product) or was made in anticipation of litigation and protected.

Parties may obtain discovery regarding any matter, no privileged, which is relevant to the subject matter involved in the pending action. O.C.G.A. § 9-11-26(b)(1). Before we reach the question of substantial need and undue hardship, the Court must find that Defendant's statement was prepared in anticipation of litigation. O.C.G.A. § 9-11-26(b)(3). Statements routinely obtained as a standard practice of investigating accidents are not protected. Atl. C.L.R. Co. v. Gause, 116 Ga. App. 216, 223 (1967). If a statement is taken by an insurer in anticipation of a claim being filed against its insured, is it considered work product under the statute. Copher v. Mackey, 220 Ga. App. 43, 46 (1996). In determining whether materials were prepared in anticipation of litigation, the focus is on whether such materials can reasonably be viewed as having been prepared in response to the actual prospect of litigation rather than having been prepared in the regular course of business. Alta Refrigeration, Inc. v. AmeriCold Logistics, LLC, 301 Ga. App. 738, 749 (2009)(investigative report not entitled to protection as was prepared according to standard operating procedure which required investigation, despite affidavits

stating that report was prepared in anticipation of litigation); Fulton DeKalb Hosp. Auth. v. Miller & Billips, 293 Ga. App. 601, 602 (2008)(anonymous complaints to personnel department doesn't make investigative materials work-product in anticipation of litigation); Atlantic Coast Line. R. Co. v. Gause, 116 Ga. App. 216, 223-224 (1967)(routine investigatory material not protected, even though conducted under direct supervision of attorney); Dept. of Transp. v. Hardaway Co., 216 Ga. App. 262, 263 (1995)(documents prepared specifically to assist in evaluating and responding to claim are protected); Howell v. United States Fire Ins. Co., 185 Ga. App. 154, 158 (1987)(work-product where specific finding by trial court that crash investigation report was prepared in anticipation of litigation); Warmack v. Mini-Skools, Ltd., 164 Ga. App. 737, 738 (1982)(materials prepared after plaintiff's husband called defendant about insurance coverage was protected); Ford Motor Co. v. Hanley, 128 Ga. App. 311, 313 (1973)(statement taken of witness by attorney not protected work-product).

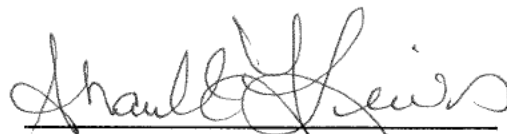
Plaintiff and Defendant were involved in a motor vehicle collision on July 4, 2020 at approximately 2:59 pm. (Plaintiff's Motion to Compel Exhibit 1, Accident Report). That afternoon, Defendant called her Progressive and gave a statement after calling her mother. (Defendant's Deposition, p. 52). That evening, Plaintiff called Progressive at 7:02 pm to report the accident. (Affidavit of [REDACTED], Exhibit 1 – Claims Processor entry). Mr. [REDACTED]'s affidavit states that claims processor entries are kept in the course of regularly conducted business activity. (Johnston Affidavit, ¶4).

The Court bent over backwards to allow Defendant to supplement the record with the exact time of Defendant's recorded statement. Defendant can give the exact minute it spoke to plaintiff but cannot even provide the day it spoke to Defendant. Based upon Defendant's deposition, the Court finds that Defendant's statement was taken in the ordinary course of business and not based upon the actual prospect of litigation.

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel Progressive to Produce Recorded Statement is GRANTED.

IT IS FURTHER ORDERED that Defendant shall provide statement to Plaintiff within ten days of this Order.

SO ORDERED this 29<sup>th</sup> day of June 2020.



Sharell F. Lewis  
Judge, State Court of Bibb County