

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:00CVO2445
)	Judge Robertson
ANN M. VENEMAN,)	
)	
Defendant.)	

**PLAINTIFFS' STATUS REPORT
ON THE PROGRESS OF DISCOVERY**

INTRODUCTION

In anticipation of the status conference scheduled for July 15, 2003, and in order to make the most efficient use of the Court's valuable time, plaintiffs submit this status report on the progress of discovery.

DISCUSSION

Following a status conference in January 15, 2003, plaintiffs served their initial discovery requests upon defendant on January 21, 2003. During the January 15, 2003 Status Conference, the Court ordered defendant to submit her objections to plaintiffs' discovery requests on or before February 14, 2003. January 15, 2003 Status Hearing Tr. at 16.

On February 14, 2003, defendant submitted what defendant characterized as "general objections" to plaintiffs' discovery requests. Defendant unilaterally elected to reserve for herself the right to file more specific objections at some undisclosed future date, presumably to be determined by defendant. With respect to at least some of the discovery requests, defendant did not even bother to submit a "general objection."

It was initially contemplated by the Court that this process of limiting defendant's initial response to objections would help to clarify the discovery issues in dispute and that the Court would consider the issues in early March. Id. at 17. Owing to scheduling conflicts, the Court did not convene another scheduling conference until April 29, 2003.

At the April 29 status conference, the Court, over the objections of plaintiffs, ruled that the failure of defendant to submit both general and specific objections to plaintiffs' discovery requests, did not constitute a waiver of such objections. April 29, 2003 Status Hearing Tr. at 32. During the course of the hearing, the Court once gain urged the parties to try to work together to come up with an appropriate sampling technique as a means of lessening the burden of discovery. Id. at 4.

At the same hearing, defendant stated that defendant had located the loan files of 37 individuals who were named as plaintiffs in the second amended complaint and was prepared to produce those files subject to the entry of an appropriate protective order. Id. at 12. The Court accepted that proposal and further ordered defendant to respond to the discovery requests within thirty days. Id. at 24, 39-40.

On May 1, 2003, plaintiffs' counsel wrote to Ms. Olson, one of defendant's counsel, requesting the names of the 37 named plaintiffs whose loan files had been located and suggesting that the parties and their experts meet as soon as possible to pursue the Court's suggestion that the parties attempt to develop a sampling technique to reduce the burden of discovery. (A copy of that letter is attached herewith as Exhibit A.) In a May 2, 2003 response, defendant identified the 37 named plaintiffs whose files defendant was prepared to produce. In that same letter, defendant flatly rejected plaintiffs' suggestion that the parties and their experts confer on sampling. As Ms. Olson's letter made clear, "we believe it is unnecessary at this stage for the parties and their experts to engage in discussions concerning the possibility of using sampling in connection with class discovery." Letter from L. Olson to S. Hill dated May 2, 2003 at 1. (A copy of the letter is attached herewith as Exhibit B.)

On May 4, 2003, defendant submitted her proposed protective order. On that same date, plaintiffs, having failed to reach agreement with defendant on the terms of the proposed protective order, submitted their own draft order. On May 8, 2003, the Court entered a protective order.

On May 12, 2003, defendant provided the regulations, notices and policy statements regarding Farm Service Agency (“FSA”) and Farmers Home Administration (“FmHA”) farm loan programs that defendant had offered to produce during the April 29, 2003 hearing. That information was contained on three compact discs and also included the regulations that were produced to the Love plaintiffs. Plaintiffs were also advised that the loan files would be ready for inspection beginning on May 15, 2003, subject to a two-day notice requirement. Plaintiffs thereupon immediately responded and indicated that on May 15, 2003, a team of plaintiffs’ lawyers would inspect the loan files produced at the Washington offices of the United States Department of Agriculture (“USDA”). Plaintiffs completed their document inspection and designations on May 15, 2003. Missing from the documents produced at that time were files regarding disaster and benefit programs. Mr. Lynn Patrick, the USDA employee overseeing plaintiffs’ document inspection, indicated to plaintiffs that USDA would probably make the disaster benefit files available the following week and USDA would call to advise plaintiffs of the exact date. Plaintiffs were also advised that the file of one of the 37 named plaintiffs, Richard Llanez, was missing and believed to be in the USDA’s Office of Civil Rights. To date, plaintiffs have not received that call with respect to the disaster relief files nor has USDA advised plaintiffs further concerning the whereabouts of the Llanez file. Moreover, as of this writing (two months since the inspection), defendant has not provided plaintiffs with the copies of the documents designated for copying on May 15, 2003.

On May 29, 2003, the date that defendant’s responses to plaintiffs’ discovery requests were due, defendant’s counsel called to advise that the responses were not ready and requested an extension of time. Defendant’s counsel also indicated that defendant wished to commence the Rule 30(b)(6) depositions beginning the last two weeks in June. Significantly, that was the very

time period that defendant's counsel had represented to the Court during the April 29, 2003 status conference as being problematic from a scheduling standpoint due to conflicts with planned vacations. April 29, 2003 Status Hearing Tr. at 30. Plaintiffs had expressed a desire to commence the Rule 30(b)(6) depositions on June 9.

Consequently, on May 29, 2003, the 129th day since plaintiffs' discovery requests were served defendant, without offering any explanation whatsoever for the failure to respond after more than four months, requested an extension of time until June 5, 2003 in which to respond to plaintiffs' interrogatories and document requests. For that reason, plaintiffs opposed the motion. On June 3, 2003, the Court granted that motion for extension of time.

On June 5, 2003, defendant served Defendant's Response to Plaintiffs' First Set of Requests for Production of Documents and Defendant's Response to Plaintiffs' First Set of Interrogatories. (Attached hereto as Exhibits C and D, respectively.) Despite the more than four months that defendant had to prepare them, the responses reflect defendant's persistent determination to limit plaintiffs to the files of certain named plaintiffs and such regulations, announcements and largely useless databases as defendant has unilaterally determined to be the extent of plaintiffs' allowable discovery. Aside from references to that narrowly circumscribed data, nearly every request is met with a litany of boilerplate objections and evasive answers.

On June 16, 2003, defendant proffered Mr. James Radintz, FSA Director of Loan Making Division for Farm Loan Programs, as the first of what turned out to be four Rule 30(b)(6) witnesses. Over the course of the ensuing three weeks, defendant revised the deposition schedule and changed proposed witnesses several times and at times on as little as one day's notice. In addition, it became clear from the witnesses' testimony that they had done very little to prepare for their depositions. For example, Mr. Radintz was proffered to testify with respect to a number of specifications, including Specification No. 9, insofar as loan making was concerned. Mr. Lynn Tjeerdsma was also proffered to testify with respect to Specification No. 9, insofar as non-credit farm disaster relief and other farm benefit programs were concerned. Specification No. 9 required the witnesses to testify on the following subject:

For the period 1981 to present, the kinds of information that defendant would retain with respect to each applicant for a farm loan or a non-credit farm disaster relief or other farm benefit programs in each county office in each of the following states: Arizona, California, Colorado, Florida, Montana, New Mexico, Texas, and Washington.

Rule 30(b)(6) Notice, Specification No. 9. See also Radintz Tr. at 6. (Radintz Deposition excerpts are attached as Exhibit E.)

Significantly, in preparing to answer Specification No. 9, Mr. Radintz and Mr. Tjeerdsma did not survey the county offices in the listed states to determine what kind of information the defendant would retain. Radintz Dep., Tr. at 62-63; Tjeerdsma Dep., Tr. at 16. (Tjeerdsma Deposition excerpts are attached as Exhibit F.) Instead, Mr. Radintz merely “presume[d] that they were following the applicable agency instructions and directives.” Mr. Radintz could not testify with certainty that the each and every county office or each of the states listed in the specification was in full compliance with the document retention policies of USDA. Radintz Dep. Tr. at 63.

On June 13, 2003, defendant produced three compact discs containing information from FSA databases regarding the loan applications and closed loans of Hispanic and white male farmers. See Letter of E. Goitein to S. Hill, June 13, 2003, at 1 (attached hereto as Exhibit G). One or more files on one of the discs was defective. While aware of the defect, defendant did not mention the problem until plaintiffs’ counsel told defendant’s counsel that there was a problem on one of the discs that caused two computers to crash while attempting to print the data contained on the disc.

While as a result of various computer “dumps,” defendant can claim that she has produced tens, if not hundreds, of thousands of pages of documents, the fact is that very little of it is of any value. For example, the information from defendant’s loan application databases that is repeatedly cited in response to plaintiffs’ interrogatories and document requests consist of tables containing the following information: the state and service office codes where the loan application was processed, the county name, the case number, the applicant’s name, fund and assistance codes specifying the type of loan, the date the application was received by the FSA

office, the date the application was deemed complete, the date the decision was made with respect to the application, the decision (i.e., accepted, rejected or withdrawn), the number of days to make the decision (measured from the date the application is deemed complete), the closing date of the loan, the loan amount and the loan amount requested. See Exhibit H.

Significantly, the database information, which defendant offers in lieu of access to individual loan files, provides absolutely no information whatsoever about the relative credit worthiness of the applicants, nor does it provide any reason why a rejected applicant is in fact rejected. Similarly, the information offers no explanation whatsoever why, with respect to certain approved loans, the decisionmakers approved the loans for less than the requested amounts.

If those shortcomings were not enough to demonstrate the uselessness of such data, defendant provides the following “caveats” with the data:

Data from FY 1998 and FY 1999 is [sic] from the Management Record System (MRS) that was converted to the Management of Agricultural Credit (MAC) system. This data has [sic] been found to be incomplete and data entry may be incorrect. Subsequent data (FY 2000, FY 2001, FY 2002, FY 2003 to 5/30/03) was [sic] entered into the MAC system and is [sic] approximately 85 to 90 percent complete. However, the correctness of the data entry has not been determined to any large extent.

Farm Service Agency, Farm Loan Programs – Application Information at 2. (Emphasis added.)
(Attached hereto as Exhibit I.)

A similar caveat accompanies the PLAS or so-called “closed loan” database:

With respect to closed loans (i.e., loans actually made), information is provided from the Program Loan Accounting System (PLAS) for all loans closed from January 1, 1988 through May 31, 2003. USDA is providing listings of borrowers in six categories: 1) Hispanic individual applicants; 2) white male individual applicants; 3) Hispanic family unit applicants; 4) white family unit applicants; 5) organization applicants/Hispanic; and 6) organization applicants/white male. The information provided for each borrower includes borrower name, address, and ID number; state and county fund code; loan number; loan closing date; loan amount; and settlement code. Borrowers were

identified as Hispanic or white male based either on a visual identification by FSA personnel or on self-identification, depending on the year at issue. Because information on national origin was not collected until 1988, no information is being provided on loans from 1981 to 1987. A description of the servicing options and settlement codes is attached. It should be noted that in 1993, a small number of selected accounts were removed from the PLAS database to create additional space on the database. The accounts removed must have had no open loans or servicing activity after January 1988. In addition, in order to maximize storage efficiency, FSA has implemented a compression of records in the database. Due to the nature of this process, it is possible that some data was lost or damaged. Therefore, the PLAS database may not be complete for the time period at issue.

Goitein 6/13/03 Letter at 2 (Exhibit G).

On June 19, 2003, defendant cancelled the proposed Rule 30(b)(6) deposition of Bob Zimmerman. Subsequently, on June 23, 2003, defendant proffered Mr. Mike Matthews as the Rule 30(b)(6) witness to testify primarily on the so-called PLAS database. The PLAS database is an accounting database containing certain information about closed loans, *i.e.*, loans for which the applications were approved and the funds distributed to the borrower. Plaintiffs have known for more than a year now that the so-called PLAS database is, for all practical purposes, useless as a tool for auditing the loan making practices of FmHA and FSA. See, e.g., Affidavit of Stephen S. Hill, ¶¶ 12-20 dated July 17, 2002, and the Declaration of Dr. Krock, ¶¶ 10-16, dated July 16, 2002, respectively Exhibit Nos. 1 and 2 to Plaintiffs' Second Supplemental Memorandum In Support of Plaintiffs' Motion for Class Certification filed July 17, 2003.

On July 3, 2003, defendant produced another three compact discs containing information with respect to the disaster relief programs. Significantly, the discs were dated June 9, 2003, June 11, 2003 and June 24, 2003. There is no explanation why defendant delayed nearly three weeks before producing two of the discs and over a week before producing the third disc. The delay is all the more troubling because plaintiffs would have liked the opportunity to review the documents prior to taking the Tjeerdsma deposition. By holding the discs until late in the afternoon on July 3, 2003, the eve of a long holiday weekend, defendant made it virtually impossible for plaintiffs to review the documents prior to Mr. Tjeerdsma's deposition.

Thereafter, following a number of schedule changes, defendant proffered Mr. Lynn Tjeerdsma on July 9th and Mr. Charles Cantrell on July 10th. As previously noted, defendant proffered Mr. Tjeerdsma to testify with respect to non-credit disaster relief and other non-credit farm benefit programs. Defendant proffered Mr. Cantrell to testify concerning information technology with respect to the loan application database.

On July 11, 2003, defendant produced seven compact discs of information consisting of listings of non-credit disaster payments to individual producers. The listings appear to be a data dump from an existing database. The listings contain the following information provided for white and Hispanic producers: state and county codes, tax identification number, payee's name and address, the date of the payment, the crop year, the disaster program category name and the amount of the payment. See Exhibit J.

As of approximately 9:00 p.m., Sunday, July 13, 2003, when the printout was suspended, three of the seven discs had produced 75,000 pages of the aforementioned information. The technician handling the printout estimated that the remaining four compact discs contained more than 200,000 pages. Thus, while defendant will be able to report to the Court that, with respect to non-credit benefit programs alone, defendant has produced more than 200,000 pages of documents, the information produced, without more, does not lend itself to any sophisticated analysis of either disparate impact or disparate treatment discrimination. Like the loan databases, the non-credit benefit program database reflected in the seven-compact-disc listing contains no information on the criteria considered in approving the payments or the relative merits of the applicants' claims for disaster relief. Nor does the database provide any information with respect to farmers who were rejected for disaster relief, much less the precise reason for rejection.

While defendant insists that plaintiffs should content themselves with the foregoing information from the databases, the witnesses testifying pursuant to Rule 30(b)(6) make it crystal clear that the information necessary to perform a sophisticated analysis of the well-documented discrimination confronting Hispanic farmers in connection with farm credit and non-credit benefit programs can only be gotten from the individual producer files and not the useless

databases. See, e.g., Radintz Dep. Tr. at 49-50; Tjeerdsma Dep. Tr. at 21-25, Exhibits E and F, respectively.

As previously noted, plaintiffs have long realized that the databases to which defendant wants largely to confine plaintiffs' discovery are useless as tools for auditing defendant's loan-making practices or the administration of defendant's non-credit farm benefit programs. Now, recent discovery calls into serious question the value of information to be found in the individual files. First, it is undisputed that defendant continued a policy of wholesale document destruction well after (1) litigation began with respect to the well-documented discrimination in connection with USDA loan-making, (2) Congress passed special legislation in 1996 tolling the statute of limitation and (3) litigation in the instant case commenced. Wholly apart from that fact, plaintiffs have learned that at least as early as 1984, USDA, in a directive from headquarters, instructed the local FmHA officials to falsify records when rejecting applicants on the basis of character. In FmHA Announcement No. 1053 (1910), dated August 1, 1984, then FmHA Administrator Charles W. Shuman, wrote to "All State Directors, Farmer Program Chiefs, District Directors, and County Supervisors," as follows:

The County Office Advisory Team has brought to our attention that the term "character" is frequently used in County Committee rejection letters. Referring to an applicant's character in a rejection letter is often considered an insult and generates hostility. Therefore, you should discontinue the use of the term "character" in rejection letters.

FmHA AN. No. 1053 (1910), dated August 1, 1984. (Emphasis added.) (Attached as Exhibit K.) As Mr. Radintz testified, loan officials were not to use the term "character" in rejection letters even if that was the basis for the rejection. Radintz Dep. Tr. at 30. As the Court will no doubt recall, "character" was one of the eligibility criteria that the Court recognized as being "subjective." See December 2, 2002 Memorandum Op. at 15.

There is simply no way to determine what impact the foregoing directive and similar directives have had on the integrity of the loan records. What is crystal clear, however, is that the databases which defendant offers in lieu of access to individual files are utterly useless for

anything other than a comparison of overall borrowing rates relative to expected levels of participation based upon population percentages. Those databases simply do not contain the information necessary to perform the analysis required by Wards Cove Packing Co., Inc. v. Atonio, 490 U.S. 642 (1989). See May 22, 2002 Memorandum Order at 2.

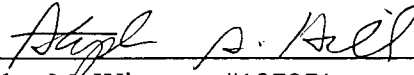
It is not by chance that the databases do not contain the information necessary to audit USDA's lending practices for discrimination. Defendant's Information Technology expert, Mr. Cantrell, testified that the MRS database had the capacity to add additional fields to include, for example, the reason why a loan was rejected. Cantrell Dep. Tr. at 21. (Cantrell Deposition excerpts are attached as Exhibit L.) Indeed, when defendant converted to the new MAC system, FSA rejected the opportunity to add a field to include the reason for rejecting a loan and concluded that that information should remain in the individual loan folders. Id. at 24.

CONCLUSION

The discovery to date reflects defendant's determination to limit plaintiffs to such largely useless material as defendant unilaterally concludes plaintiffs should receive. Defendant has rejected out of hand plaintiffs' overtures to work together to attempt to reduce the demands of discovery. Instead, defendant seems intent on delaying the discovery process as much as possible and burdening plaintiffs as much as possible with data that defendant knows to be useless. Indeed, defendant has grossly larded her production with literally hundreds of thousands of pages of largely useless information. In addition, she has submitted responses to plaintiffs' interrogatories and document requests that are, in large measure, evasive and incomplete. At the same time, defendant has steadfastly denied plaintiffs' access to the individual files of white male farmers and Hispanic farmers other than thirty six named plaintiffs whose files have been inspected but as yet defendant has not provided plaintiffs the copies they requested two months ago. So long as defendant denies plaintiffs access to individual loan and disaster relief files, plaintiffs cannot perform sophisticated statistical analyses of the well-documented disparate

impact and disparate treatment that confronts Hispanic farmers and ranchers seeking USDA farm credit and the opportunity to participate in non-credit farm benefit programs.

Respectfully submitted,



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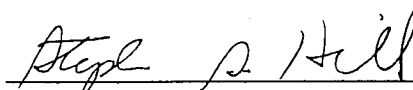
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Dated: July 15, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiffs' Status Report On The Progress of Discovery was served upon counsel of record, by Hand Delivery on July 15, 2003.

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