

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALAN CANTOR : CIVIL ACTION
v. :
THE EQUITABLE LIFE ASSURANCE :
SOCIETY OF THE UNITED STATES : NO. 97-5711

MEMORANDUM AND ORDER

THOMAS J. RUETER
United States Magistrate Judge

August , 1998

Presently before the court are: (1) defendant The Equitable Life Assurance Society of the United States' motion to compel plaintiff's responses to defendant's discovery requests (Document No. 13); (2) defendant The Equitable Life Assurance Society of the United States' motion for protective order with respect to: (a) the deposition of Steven Rutledge (Document No. 8), (b) the deposition of Joseph J. Melone (Document No. 10), and (c) the deposition of an additional corporate designee (Document No. 12); (3) plaintiff's motion to compel defendant's answers to plaintiff's second request for documents addressed to defendant (Document No. 20); and (4) plaintiff's motion to compel defendant's answers to plaintiff's third request for documents addressed to defendant (Document No. 21).¹

¹ These motions were referred to this court for disposition by the Honorable James McGirr Kelly by Order dated July 14, 1998.

I. Defendant The Equitable Life Assurance Society of the United States' Motion to Compel Plaintiff's Responses to Defendant's Discovery Requests (Document No. 13).

Plaintiff states that he has already provided the medical records of Dr. Harvey Horowitz. To the extent that any such medical records have not been provided to defendant, plaintiff shall supplement his prior production. Plaintiff has agreed to produce Melodie Cantor for deposition. Moreover, plaintiff has agreed to provide the last known addresses of Robert Shore, Joe Karas, and Keith Ross.

In its Interrogatories - Set II and Request for Production of Documents - Set III, defendant seeks information relating to plaintiff's post claim financial holdings and transactions. Plaintiff argues that information that defendant did not have in June, 1997, when it allegedly made the decision to terminate plaintiff's disability benefits, is irrelevant. In his complaint, plaintiff seeks the reinstatement of the subject disability benefits. The information sought by defendant in its discovery requests relates to plaintiff's claim that he is presently unable to do his prior work, and thus appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1). Plaintiff shall respond to these discovery requests.

II. Defendant The Equitable Life Assurance Society of the United States' Motion for Protective Order with Respect to: (a) the Deposition of Steven Rutledge (Document No. 8), (b) the Deposition of Joseph J. Melons (Document No. 10), and (c) the Deposition of an Additional Corporate Designee (Document No. 12).

In these three motions, defendant seeks a protective order preventing plaintiff from deposing Steven Rutledge, an "upper-management Vice-President" of defendant, Joseph J. Melone, a former Chief Executive Officer of defendant, and an "additional Equitable Corporate designee". Defendant also seeks a protective order preventing the production of the

Administrative and Marketing Agreement between defendant and Paul Revere (the “Administrative Agreement”).

With respect to the Administrative Agreement, plaintiff seeks this agreement because he believes it provides economic incentives to Paul Revere for terminating benefits, such as plaintiff’s, and will show that defendant was motivated to terminate plaintiff’s benefits by an effort to reduce losses. (Pl.’s Mem. of Law Opp. Mot. re: Rutledge at 7.) Ms. Alisa Morgan testified at her deposition that she made the final decision to terminate plaintiff’s benefits. (Def.’s Supplemental Testimony Supp. Mots. for Prot. Orders, Ex. A at 93-94.) She did not consult her superior, Mr. John O’Hara, or any one else, in making that decision. Id. at 140, 163-65. Both Ms. Morgan and Mr. O’Hara testified that they were unaware of the Administrative Agreement at the time plaintiff’s benefits were terminated. Id. at 20. (Def.’s Mem. of Law Supp. Mot. for Prot. Order re: Rutledge at 3-4.) Since the Administrative Agreement was not relied upon in making the decision to terminate plaintiff’s benefits, it is not relevant to the instant matter and defendant need not produce it.²

Defendant has already produced for deposition the individuals who handled the termination of plaintiff’s claim in a material manner. In particular, plaintiff deposed Alisa Morgan, the claims consultant who made the final decision to terminate plaintiff’s benefits, John O’Hara, Director of Claims, psychological consultants Paul Burgos and Dr. McDowell, and psychiatrist Dr. Glass. Ms. Morgan and Mr. O’Hara testified that Mr. Rutledge was not involved in the decision to terminate plaintiff’s benefits. (Def.’s Mem. of Law Supp. Mot. for Prot. Order

² This court need not reach defendant’s argument that the Administrative Agreement is confidential and proprietary as it is part of both companies’ business strategy.

re: Rutledge Ex. B at 20; Def.'s Supplemental Testimony Supp. Mots. for Prot. Orders Ex. A at 163-65.) Plaintiff has provided no evidence, however slight, that Mr. Melone was involved in the decision to terminate plaintiff's benefits. Since Mr. Rutledge and Mr. Melone were not involved in the decision to terminate plaintiff's benefits, their testimony at a deposition would be irrelevant, and would constitute an annoyance and harassment, and would be unduly burdensome.³ See Fed. R. Civ. P. 26(c). Although it is unusual for a court to issue a protective order that prohibits a deposition, see United States v. Mariani, 178 F.R.D. 447, 448 (M.D. Pa. 1998), courts have entered such an order in situations like the one presently before the court. See Lewelling v. Farmers Ins. of Columbus, Inc., 879 F.2d 212, 218 (6th Cir. 1989) (Based in part upon defendant's representation that the defendant's then Chairman and CEO had no knowledge of the facts pertinent to plaintiff's action, District Court did not abuse its discretion in granting defendant's motion for protective order.)

Moreover, since this court has also determined that the Administrative Agreement is not relevant to this matter, their testimony on this issue would also be irrelevant, and also would constitute an annoyance and harassment, and would be unduly burdensome. Consequently, defendant's motion for protective orders with respect to Mr. Rutledge and Mr. Melone will be granted.

³ Plaintiff also seeks to depose Mr. Melone to have him explain the source and meaning of statements he made in defendant's annual reports. Plaintiff contends that Mr. Melone can testify regarding the source of the information and the impact his words had on the policy and practice at defendant and Paul Revere. (Pl.'s Resp. to Mot. for Prot. Order re: Melone at 2.) Ms. Morgan, the individual who made the decision to terminate plaintiff's benefits, has already testified as to what she relied upon in making that decision. She did not rely upon the Administrative Agreement or other information regarding losses suffered by defendant and/or Paul Revere. Consequently, deposition testimony by Mr. Melone on these issues is irrelevant.

Defendant's motion for a protective order with respect to an additional corporate designee is also granted.⁴ Plaintiff claims that the Paul Revere corporate designee supplied by defendant, John O'Hara, "was unable to testify regarding defendant Equitable's policies and procedures for claim handling, Equitable's handling of plaintiff's claim, or the Agreement between Equitable and Paul Revere for the management of claim". (Pl.'s Resp. to Mot. for Prot. Order re: Corporate Designee at 1.) A review of the portions of Mr. O'Hara's deposition transcript provided by plaintiff, however, reveals that he was able to testify regarding defendant's policy for claim handling and the handling of plaintiff's claim in particular during the time periods relevant to this litigation. *Id.* at Ex. A at 58-59, 154-55. Since this court has determined that the Administrative Agreement is not relevant in this matter, it is inconsequential that Mr. O'Hara was unable to testify as to the terms or impact of that Agreement.

III. Plaintiff's Motion to Compel Defendant's Answers to Plaintiff's Second Request for Production of Documents (Document No. 20).

Defendant need not produce the documents sought in request numbers three through six seeking documents regarding the yearly income Dr. Gary M. Glass received from defendant, Paul Revere, and Provident, as well as from all other insurance companies. Plaintiff deposed Dr. Glass on June 15, 1998, and questioned Dr. Glass regarding the dynamics of his practice and the work he has performed for defendant. Plaintiff deposed defendant's in-house psychological consultant, Paul Burgos, on these issues as well. Defendant also provided an appropriate response to these requests. (Pl.'s Mot. Ex. B.) The production of these materials

⁴ Plaintiff stresses that it is seeking to depose an Equitable corporate designee and that defendant has only provided a Paul Revere corporate designee, John O'Hara, therefore, it is not seeking to depose an "additional" corporate designee. This court's decision is not premised on whether the corporate designee plaintiff seeks to depose is called "additional" or not.

would be burdensome to defendant, and are not vital to plaintiff's case, especially since these documents would only be used for impeachment purposes, and plaintiff has obtained sufficient information from the witnesses' depositions to show their bias. (Pl.'s Mot. Ex. B; Def.'s Mem. of Law Opp. Mot. at 6-7.) Accordingly, defendant need not produce these materials. See Fed. R. Civ. P. 26(b)(2) (court may prohibit discovery of the information when it can be obtained from a less burdensome source.)⁵ For the same reasons, defendant also need not produce documents in response to request number 7. As Dr. Glass testified at his deposition, obtaining this material would require him to go "read every report in his file room." (Def.'s Mem. of Law Opp. Mot. Ex. B at 20-21.) Plaintiff questioned Dr. Glass regarding this information at his deposition, and he testified that he has rendered reports in favor of plaintiffs in defense cases. Id. at 20. See Fed. R. Civ. P. 26(b)(2).

IV. Plaintiff's Motion to Compel Defendant's Answers to Plaintiff's Third Request for Documents Addressed to Defendant (Document No. 21).

Defendant need not produce documents in response to request numbers 1, 2 and 3 because plaintiff admits that he already has copies of annual reports of Paul Revere and Provident. (Pl.'s Mot. at ¶7.) Defendant also need not produce documents in response to request

⁵ Defendant argues that the yearly income received by Dr. Glass from Paul Revere Life Insurance Group and Provident Life and Accident Insurance Company is irrelevant to this case because neither of those entities is a named defendant. Paul Revere, however, is a third party administrator for plaintiff's individual disability business (Def.'s Mem. of Law Opp. Mot. at 6), and Provident purchased Paul Revere in 1997 prior to the termination of plaintiff's disability benefits. This court refuses to find at this juncture that such information is irrelevant. Plaintiff contends that this information is relevant to Dr. Glass' credibility. (Pl.'s Mem. of Law Supp. Mot. at 4-5.) Defendant may raise the issue of relevance again should plaintiff explore these areas at trial.

number 4. Defendant maintains that its revenue figures are contained in the annual reports plaintiff admits that he has in his possession.

Plaintiff seeks a listing of the yearly revenues of Paul Revere and Provident for the years 1988 through 1998, arguing that they are relevant to plaintiff's claim for bad faith and punitive damages. Plaintiff admits that he has copies of the annual reports of these entities. (Pl.'s Mot. at ¶7.) Defendant maintains that the revenue figures are contained in these annual reports. Accordingly, this information need not be produced.

For the reasons stated above, defendant need not produce the Administrative and Marketing Agreement with Paul Revere.

ORDER

AND NOW, this day of August, 1998, for all of the above reasons, it is hereby

ORDERED

(1) Defendant The Equitable Life Assurance Society of the United States' motion to compel plaintiff's responses to defendant's discovery requests (Document No. 13) is **GRANTED**, and any information which plaintiff must produce, as directed by the court's Memorandum, must be sent to defendant within twenty (20) days from the date of this Order;

(2) The deposition of Melodie Cantor shall take place on Wednesday, September 16, 1998, commencing at 10:00 a.m. and continuing thereafter on successive days until completed, at the offices of White and Williams LLP, 1800 One Liberty Place, Philadelphia, PA 19103. If this date is not mutually convenient, the deposition may be rescheduled to another date, but must commence no later than October 1, 1998;

(3) Defendant The Equitable Life Assurance Society of the United States' motion for protective order with respect to: (a) the deposition of Steven Rutledge (Document No. 8), (b) the deposition of Joseph J. Melone (Document No. 10), and (c) the deposition of an additional corporate designee (Document No. 12) are **GRANTED**;

(4) Plaintiff's motion to compel defendant's answers to plaintiff's second request for documents addressed to defendant (Document No. 20) is **DENIED**; and

(5) Plaintiff's motion to compel defendant's answers to plaintiff's third request for documents addressed to defendant (Document No. 21) is **DENIED**.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge