

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

JAMES J. O'CONNOR : CIVIL ACTION  
 :  
 v. :  
 :  
 TRANS UNION CORPORATION : NO. 97-4633

**MEMORANDUM AND ORDER**

HUTTON, J.

November 4, 1998

Presently before the Court is the Motion by Plaintiff James J. O'Connor for Reconsideration (Docket No. 21), the Defendant's response thereto (Docket No. 23) and the Plaintiff's reply thereto (Docket No. 24).

**I. BACKGROUND**

On July 16, 1997, the Plaintiff James J. O'Connor brought this action against Defendant Trans Union Corporation ("Trans Union") alleging various violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. (1988) ("FCRA") and Pennsylvania tort law. In his complaint, O'Connor alleges, in substance, that the Defendant prepared a credit report containing false and defamatory information, and that they refused to delete the information from his credit file after he notified them of the inaccuracy.

On September 17, 1998, this Court granted in part and denied in part Plaintiff James J. O'Connor's Motion to Compel

Disclosure. See Order dated Sep. 17, 1998, by Honorable Herbert J. Hutton, O'Connor v. Trans Union Corp., No. CIV.A. 97-4633, at 1. The Court denied the Plaintiff's Motion as it relates to Interrogatory No. 4 and Production of Documents Nos. 2, 3 and 6. All of those requests related to "mixed files." The Court explained that "the Defendants have provided the Court with Eileen Little's Affidavit in support of summary judgment, which explains that the Plaintiff's dispute was not a 'mixed file' under [Trans Union] guidelines." The Court concluded that "[s]uch materials are therefore irrelevant to the Plaintiff's dispute and will not lead to relevant evidence." On September 28, 1998, the Plaintiff filed the instant motion requesting this Court to reconsider that Order. The Defendant filed its memorandum of law in opposition on October 13, 1998. On October 23, 1998, the Plaintiff filed his reply memorandum of law. For the foregoing reasons, the Plaintiff's motion is **GRANTED**.

## **II. DISCUSSION**

"The standards controlling a motion for reconsideration are set forth in Federal Rule of Civil Procedure 59(e) and Local Rule of Civil Procedure 7.1." Vaidya v. Xerox Corp., No. CIV.A97-547, 1997 WL 732464, at \*1 (E.D. Pa. Nov. 25, 1997). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); see also Drake v.

Steamfitters Local Union No. 420, No. CIV.A97-CV-585, 1998 WL 564886, at \*3 (E.D. Pa. Sep. 3, 1998). Generally, a motion for reconsideration will only be granted on one of the following three grounds: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice. Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994); see also D'Allesandro v. Ludwig Honold Mfg. Co., No. CIV.A95-5299, 1997 WL 805182, at \*1 (E.D. Pa. Dec. 18, 1997).

In the instant motion, the Plaintiff does not allege that there has been any change in controlling law or that there is any newly discovered evidence. Furthermore, the Plaintiff does not argue that this Court made a clear error of law. The Plaintiff can succeed, therefore, only if he can show that it is necessary to correct a "manifest injustice" resulting from its earlier order on the Plaintiff's motion to Compel Discovery. Walker v. Spiller, No. CIV.A97-6720, 1998 WL 306540, at \*2 (E.D. Pa. Jun. 9, 1998) (citing Smith, 155 F.R.D. at 96-97). In his motion, the Plaintiff argues that Ms. Little's Affidavit in support of summary judgment, which explains that the Plaintiff's dispute was not a "mixed file" under Trans Union guidelines, is "not credible." (Pl.' Mem. Law Supp. Mot. Recons. at 2.) The Plaintiff challenges Ms. Little's testimony on three grounds: (1) it is inconsistent with her

previous sworn deposition testimony; (2) it is inconsistent with the documented characterization and handling of the Plaintiff's dispute by Trans Union Employees; and (3) it is inconsistent with any possible reasonable interpretation of the "mixed file" term as defined in Trans Union's manuals and applied to the Plaintiff's dispute.

The Defendant concedes that the Plaintiff's dispute was initially labeled a "mixed file," however, argues that after further investigation it was determined not to fit the criteria.<sup>1</sup> (See Def.'s Mem. Law Opp'n at 1-3.) In his memorandum, the Defendant states that "'mixed files' involve disputes where there is a senior, junior, someone of a similar name." Without elaborating, the Defendant merely states that the Plaintiff's dispute "do[es] not fit that criteria." This Court is not convinced that it is beyond question that the Plaintiff's dispute did not involve a "mixed file."

Trans Union's Consumer Relations Policies and Procedures Manual provides in relevant part that:

THE FOLLOWING ARE THE SPECIFIC CASES WHERE A DISPUTE SHOULD BE PROCESSED AS A MIXED FILE:

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<sup>1</sup>In opposition to the Plaintiff's first two arguments, the Defendant argues that Ms. Little's deposition testimony is consistent with its present position that the Plaintiff's dispute was initially classified a "mixed file." Ms. Little originally testified that the Plaintiff's dispute "sounds like a mixed file" and that Trans Union began to "investigate it as a mixed file." (Dep. of E. Little dated Mar. 24, 1998, at 46-47, 53-55.) Moreover, upon receipt of Plaintiff's dispute letter, Trans Union's consumer investigator, Ms. Pat Latta, placed a batch ticket on it identifying it as a mixed file. This was confirmed in Ms. Little's deposition testimony. (Id. at 61-62.)

- CLAIMS CONFUSED WITH OR MIXED WITH SOMEONE.
- THE CONSUMER STATES THEY ARE A JR./SR./III, ETC. AND DISPUTE ITEMS AS NOT BEING THEIRS.
- THE CONSUMER DOES NOT MENTION JR./SR./III, ETC., BUT DISPUTES THREE OR MORE ITEMS AS NOT BEING THEIRS/NO KNOWLEDGE OF ACCOUNT ETC.

(Pl.'s Mot. at 7; Ex. 3.) The Plaintiff's initial dispute letter dated February 12, 1997, stated that the report contained information that did not relate to him, but rather related to his son, James J. O'Connor, Jr. (Id. at 8; Ex. 4.) The Plaintiff alleged that the report erroneously included "numerous inaccurate items, including addresses and accounts which do not relate to me." (Id.) In fact, the report allegedly contained five items of "adverse" credit information unrelated to the Plaintiff including four related to the Plaintiff's son and/or daughter in law. Because the Plaintiff has shown that his dispute was likely a "mixed file" under Trans Union's guidelines, the Court can no longer rely on Ms. Little's Affidavit.

The Plaintiff contends that "[t]he issue of mixed files and how extensive this serious problem is at Trans Union is relevant to a consideration of whether Trans Union failed to follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about who its reports relate." Accordingly, to prevent manifest injustice the Court will reconsider its earlier Order and grant the Plaintiff's motion to compel regarding Interrogatory No. 4 and Production of Documents Nos. 2, 3 and 6.

An appropriate Order follows.

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O R D E R

AND NOW, this 4th day of November, 1998, upon consideration of the Motion by Plaintiff James J. O'Connor for Reconsideration (Docket No. 21), the Defendant's response thereto (Docket No. 23) and the Plaintiff's reply thereto (Docket No. 24), IT IS HEREBY ORDERED that the plaintiff's Motion is **GRANTED**.

IT IS FURTHER ORDERED that:

(1) Defendant **SHALL** provide Plaintiff a full and complete response to Plaintiff's Interrogatory Number 4 within twenty (20) days of the date of this Order; and

(3) Defendant **SHALL** provide Plaintiff all documents requested in Plaintiff's Request for Production of Documents, Set No. 2, for Numbers 2, 3 and 6 within twenty (20) days of the date of this Order.

BY THE COURT:

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HERBERT J. HUTTON, J.

