

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

RALPH L. HERBST : CIVIL ACTION
 :
 v. :
 :
 GENERAL ACCIDENT INSURANCE :
 COMPANY : NO. 97-8085

MEMORANDUM ORDER

Presently before the court are plaintiff's Motions to Compel Responses to Request for Production of Documents and for Sanctions, as well as defendant's cross-Motion for Sanctions.

Plaintiff contends that defendant has impermissibly withheld documents requested during discovery in this employment discrimination case. Plaintiff also complains that documents which were produced were not numbered, indexed, labeled or collated by request, thus making it difficult for plaintiff's counsel to ascertain which documents respond to which request. Plaintiff charges defense counsel with acting in bad faith.

Defendant notes that it has produced to plaintiff 2,257 pages of documents in the manner in which they are kept in the normal course of business. Defendant complains that plaintiff's counsel has completely failed to confer with defense counsel regarding the manner in which these documents were produced, despite his certification to the contrary, and that plaintiff's counsel failed without explanation to attend each of two

appointments to confer with defense counsel regarding discovery issues or to reschedule despite defense counsel's repeated requests that he do so.

In response to requests for production of "all legal or litigation files/folders created on [plaintiff]" and "all legal or litigation files/folders for all Philadelphia legal office employees who were considered litigation threats," defendant agreed to make available for review and copying all documents or portions of documents which are not privileged or attorney work product. Defendant has also objected to some requests on the ground of overbreadth. Typical of these are requests for production of "all records, reports, memoranda, correspondence and things pertaining or related to" a claim filed by another employee and for production of "all statements of defendants' officers, servants, agents and employees," without any apparent restriction as to scope. Defense counsel, however, offered to meet with plaintiff's counsel to narrow or focus such requests.

Defendant itself complains that plaintiff has failed to respond to long-overdue discovery requests and indeed has failed to produce a single document or answer a single interrogatory. Defendant also submits a report of the designated mediator in this case, a prominent and experienced attorney, declining to proceed because of the failure of plaintiff's counsel to cooperate in scheduling the mediation.

Counsel are expected to conduct discovery in a professional manner and to seek court intervention only as a last resort when all reasonable efforts to facilitate the exchange of information or resolve a dispute have been unavailing.

On the assumption that defense counsel remain willing to work with plaintiff's counsel to reasonably define the scope of seemingly broad requests, will provide a general description of any existing responsive documents withheld on a claim of privilege or work product doctrine and will provide reasonable assistance to plaintiff's counsel in explicating the 2,000 plus documents produced, plaintiff's motion will be denied.

Plaintiff may renew his motion if, after a careful examination of the materials produced and a diligent attempt to resolve any remaining discovery dispute, plaintiff still believes in good faith that he is being denied discovery to which he is entitled. Any such motion will be summarily denied, however, unless it is accompanied by specific representations as to the efforts undertaken by counsel reasonably to resolve each dispute without court intervention. Of course, the filing of an ill-founded motion to compel discovery or for sanctions is itself sanctionable. See Fed. R. Civ. P. 37(a)(4)(B); Zappala v. Albicelli, 954 F. Supp. 538, 548 (N.D.N.Y. 1997); Stiller v. Arnold, 167 F.R.D. 68, 72 (N.D. Ind. 1996).

ACCORDINGLY, this day of December, 1998, upon consideration of plaintiff's Motions to Compel Responses to Request for Production of Documents and for Sanctions (Doc. #19, all parts) and defendant's cross-Motion for Sanctions (Doc. #22), **IT IS HEREBY ORDERED** that said Motions are **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.