

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

IN RE AETNA INC. : CIVIL ACTION  
SECURITIES LITIGATION : MDL NO. 1219  
 : (All Cases)  
 : CIVIL ACTION

M E M O R A N D U M

**Padova, J.**

May 26, 1999

Before the Court are the following Motions: Defendants' Motion to Compel Interrogatory Responses<sup>1</sup> and Plaintiffs' Motion for a Protective Order. For the reasons set forth below, the Court will grant Defendants' Motion and will deny Plaintiffs' Motion.

I. DEFENDANTS' MOTION TO COMPEL INTERROGATORY RESPONSES

A. Background

On April 19, 1999, Defendants served three interrogatories on Plaintiffs. Interrogatory No. 1 reads as follows: "State the names and addresses of the following persons described in the Complaint. For convenience, the descriptions have been repeated below." Each sub-part of Interrogatory No. 1 contains a specific quotation from a specific paragraph of Plaintiffs' Second Amended

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<sup>1</sup>Defendants' Motion to Compel was filed as a Motion for Sanctions. At a hearing held on May 12, 1999, the Court, with the agreement of the parties, converted Defendants' Motion for Sanctions into a Motion to Compel.

Complaint. For example, sub-part (a) reads as follows: "Para. 54 - 'a former regional general manager of Aetna'" Plaintiffs refuse to answer Interrogatory No. 1. Plaintiffs argue that via this interrogatory, Defendants seek "the name and address of each of the persons interviewed in connection with the allegations set forth in paragraphs 54-61 and 64-73 of the [Second Amended] Complaint." (Pls.' Opp. to Defs.' Mot. ("Pls.' Opp.") at 2.)

Interrogatory No. 2 reads as follows: "For each of the paragraphs of the Complaint set forth below, state the name and address of any supporting witness who was the basis for the allegation in each paragraph." Interrogatory No. 2 seeks the identification of supporting witnesses for the allegations contained in ¶¶ 54-61 and 64-73 of the Second Amended Complaint. Plaintiffs have refused to answer the interrogatory propounded by Defendants. Instead, they purport to answer a different interrogatory asking Plaintiffs to identify persons who have knowledge pertaining to the allegations in paragraphs 54-61 and 64-69. (Pls.' Resp. to Defs.' Interrog. ("Pls.' Resp.") at 1.) Plaintiffs provide 750 names of individuals with knowledge of paragraphs 54 through 69. In addition to the sheer magnitude of the total number of names, the lists of names of persons with knowledge of specific paragraphs are also very lengthy. For example, Plaintiffs list over 200 names of persons with knowledge of paragraph 55. Plaintiffs also fail to provide addresses for

any of the individuals that they have named.<sup>2</sup>

Interrogatory No. 3 reads as follows: "State the name and address of any witness with personal knowledge of the allegations of the Complaint who accuses any of the defendants of securities fraud, as defined in Section 10(b) of the Exchange Act of 1934, at any time during the purported class period as defined in the Complaint." Although Plaintiffs interposed general objections to Interrogatory No. 3, they answered this interrogatory by representing that "there are no responsive names and addresses." Because Plaintiffs answered this interrogatory, it is not the subject of Defendants' Motion to Compel.

#### B. Discussion

Plaintiffs have objected to Interrogatory Nos. 1 and 2 on the grounds that "they seek information the disclosure of which would violate the attorney-work product doctrine." (Pls.' Resp. at 1.) In particular, they argue that if the Court compels them to answer these interrogatories they will be forced to reveal the names of individuals they interviewed in connection with the

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<sup>2</sup>Plaintiffs did not provide any names of individuals with knowledge of paragraphs 70-73. Plaintiffs have offered to amend their responses to provide a list of individuals with knowledge of paragraphs 70-73 as well as addresses for "as many of the identified individuals which plaintiffs can obtain." (Pls.' Resp. at 3.)

preparation of their Complaint.<sup>3</sup>

The Court concludes that the interrogatories at issue are appropriate and that Plaintiffs must answer them. The Court bases its decisions on the following grounds: (1) the interrogatories seek relevant factual information in support of contentions that were framed by Plaintiffs and set forth in the Second Amended Complaint; (2) the information sought is not protected by the work product doctrine, or in the alternative, at most has minimal work product content; and (3) the need for the information sought outweighs the minimal work product content that such information may have. The Court will address each of these points in turn.

First, the interrogatories do not seek the disclosure of those individuals interviewed by Plaintiffs' counsel. Rather, the interrogatories propounded by Defendants are classic contention interrogatories. Contention interrogatories are a common discovery tool used to discover the facts underlying contentions set forth in pleadings. Plaintiffs have included specific contentions in their Second Amended Complaint. Defendants have framed interrogatories aimed at the discovery of the factual support for certain of these contentions. For example, ¶ 56 contains the following allegation: "The allegations contained in this paragraph are based upon interviews and

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<sup>3</sup>Plaintiffs refer to these individuals as their "sources."

discussions with a former Aetna vice-president of sales and customer service." Defendants seek the disclosure of the facts underlying this contention. In particular, Defendants seek the discovery of the identity of the "former Aetna vice-president of sales and customer service." Plaintiffs chose to include this allegation in their Second Amended Complaint and chose the way in which this allegation was framed. Defendants are entitled to the discovery of the name and address of those persons described in the Second Amended Complaint. Such information is obviously "relevant to the subject matter involved in the pending action" and is "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Moreover, the interrogatories request "the identity and location of persons having knowledge of any discoverable matter," and as such fall squarely within Rule 26(b)(1). Id.

Second, the Court finds that the names and addresses of individuals interviewed by Plaintiffs' counsel are not protected by the attorney work product doctrine under Hickman v. Taylor, 329 U.S. 495, 511, 67 S. Ct. 385, 393 (1947). At most, such information has minimal work product content. In reaching this conclusion, the Court follows United States v. Amerada Hess Corp., 619 F.2d 980 (3d Cir. 1980). In Amerada, the government sought the enforcement of two Internal Revenue Service summonses issued to Amerada Hess Corporation concerning a civil audit of

federal tax returns of Amerada. One summons sought the production of a list of names of persons interviewed by Amerada's outside counsel, Milbank, Tweed, Hadley & McCloy ("Milbank"). At the request of Amerada, Milbank had conducted a series of interviews of 50 of Amerada's officers and employees as part of an internal investigation concerning possible improper payments by Amerada to foreign officials and citizens. A list of the names of the persons interviewed by Milbank was compiled by Milbank. Amerada resisted the production of the list of interviewees on the basis that the list was protected by the attorney-client privilege and the attorney work product doctrine.

The United States Court of Appeals for the Third Circuit ("Third Circuit") concluded that the list of persons interviewed by Milbank was not protected by the attorney-client privilege. Amerada, 619 F.2d at 986-87. With respect to the application of the work product doctrine, the Third Circuit held that the list was work product because it had been compiled by Milbank, but its work product content was minimal. The court explained its holding as follows:

Indisputably, the Milbank report qualifies as material prepared or collected in anticipation of possible litigation. Indisputably, also, the protection is qualified, and demands a particularized determination with respect to each piece of information sought. Thus, neither the fact that the list was compiled by Milbank, nor the fact that it was attached to a report prepared in anticipation of possible litigation is dispositive. Rather, application of the rule depends upon the nature of the document, the extent to which it

may directly or indirectly reveal the attorney's mental processes, the likely reliability of its reflection of witness' statements, the degree of danger that it will convert the attorney from advocate to witness, and the degree of availability of the information from other sources.

In this case the list of interviewees is just that, a list. It does not directly or indirectly reveal the mental processes of the Milbank attorneys. It furnishes no information as to the content of any statement. There is no realistic possibility that its production will convert any member of the Milbank firm from advocate to witness. None of the policy reasons for protection of work product, other than the fact of its initial compilation by Milbank, applies.

Id. at 987-88 (citations omitted).

In this case, Defendants seek facts underlying contentions made by Plaintiffs in their Second Amended Complaint. Unlike in Amerada, Defendants are not seeking the production of a document prepared by Plaintiffs' counsel in anticipation of litigation. Whatever minimal work product protection that the list of interviewees had in Amerada rested on the fact that the list was initially compiled by Milbank. That fact is missing in this case. Here, Defendants are merely seeking the disclosure of a specific subcategory of all potential fact witnesses: those that are described in Plaintiffs' Second Amended Complaint. The fact that those individuals described in the Second Amended Complaint were interviewed by Plaintiffs' counsel during its investigation in anticipation of litigation does not change the Court's conclusion. The Supreme Court in Hickman v. Taylor made clear that the work product doctrine protects against the disclosure of

an attorney's mental processes and legal opinions; the critical question is the extent to which the information discloses an attorney's thought processes. The disclosure of the names and addresses of those individuals interviewed by Plaintiffs' counsel will not reveal the "mental impressions, conclusions, opinions, or legal theories of [Plaintiffs'] attorneys." Fed. R. Civ. P. 26(b)(3); Amerada, 619 F.2d at 987-88. Therefore, the Court concludes that the identity of the persons described in the Second Amended Complaint is not protected by the work product doctrine. Ballard v. Allegheny Airlines, Inc., 54 F.R.D. 67, 69 (E.D. Pa. 1972); Castle v. Sangamo Weston, Inc., 744 F.2d 1464, 1467 (11th Cir. 1984)("the law is clear that [names and addresses of the witnesses already interviewed by plaintiffs are] subject to discovery.").

Finally, even if the Court were to construe the information which Defendants' interrogatories seeks to elicit as protected by the work product doctrine, the need for the disclosure of the information outweighs the minimal work product content of the information. In Amerada, the Third Circuit applied a balancing test and concluded that the time and effort that the government would have had to expend in compiling a list of persons interviewed by Milbank justified the production of the list of interviewees. The Third Circuit reasoned as follows:

[A]pplication of the qualified work product protection involves a balancing of competing considerations.

Where, as here, the work product in question is of rather minimal substantive content, and presents none of the classic dangers to which the Hickman v. Taylor rule is addressed, the government's showing of need can be comparatively lower. Avoidance of the time and effort involved in compiling a similar list from other sources is, in this case, a sufficient showing of need. The district court did not err in concluding that, while the work product rule applied in IRS summons enforcement cases, and the list was work product, the qualified protection in this instance yielded to the IRS's need to get on with its investigation.

Amerada, 619 F.2d at 988.

In this case, Plaintiffs have named approximately 750 individuals who have knowledge pertaining to the allegations in ¶¶ 54-61 and 64-69 of the Second Amended Complaint. This list is incomplete and may grow even larger because Plaintiffs failed to provide any names of those with knowledge of ¶¶ 70-73. Without the Court's intervention, Defendants would be forced to engage in a time-consuming and expensive effort to ferret out the veritable needle in the haystack. In order to identify those persons with information about Plaintiffs' allegations, Defendants would have to interview or depose each and every one of the 750 individuals named by Plaintiffs. The Court will not allow the discovery process to be subverted in this way. The Court finds that Defendants have made a sufficient showing of need; the qualified protection over the names and addresses of those persons interviewed by Plaintiffs' counsel must yield to the need of the Defendants to get on with discovery in this case.

Furthermore, the disclosure of the names and addresses of

persons interviewed by Plaintiffs' counsel is consistent with the policy considerations underlying the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C.A. § 78u-4 (West 1997). The PSLRA was passed in an effort to curtail the filing of so-called strike suits. To this end, Congress imposed more stringent pleading requirements on plaintiffs in securities fraud cases. One such requirement imposed upon plaintiffs the burden of identifying the sources for allegations pled on information and belief. 15 U.S.C.A. § 78u-4(b)(1). Although in this case the Court did not require Plaintiffs to name their sources when they amended their Complaint, there is authority to support such a disclosure at the pleading stage. See In re Silicon Graphics Sec. Litig., 970 F. Supp. 746 (N.D. Cal 1997). The Court is not prepared at this juncture to revisit its earlier decision. However, the Court notes that the tactics employed by Plaintiffs in responding to Defendants' interrogatories lend support to the position that disclosure of the names of sources at the pleading stage may be warranted. By answering Defendants' interrogatories with an avalanche of names, Plaintiffs have reinforced Defendants' suspicions that this case is not based on hard facts but rather on smoke and mirrors.

For the reasons set forth above, Defendants' Motion to Compel will be granted. Plaintiffs will be ordered to answer fully Interrogatory Nos. 1 and 2.

## II. MOTION FOR PROTECTIVE ORDER

Plaintiffs have filed a Motion for Protective Order Limiting Defendants' Use of information Relating to the Identity of Plaintiffs' Sources. In this Motion, Plaintiffs argue that, in the event the Court compels Plaintiffs' responses to Defendants' interrogatories, the Court should issue an order prohibiting Defendants from publicly disclosing the names of Plaintiffs' sources, prohibiting any retaliatory acts against the sources, and limiting Defendants' direct contacts with the sources by permitting Plaintiffs' counsel to be present during any such contact with the sources. (Pls.' Mem. in Supp. of Mot. at 2.)

Rule 26(c) of the Federal Rules of Civil Procedure governs Plaintiffs' ability to obtain a protective order from this Court. Rule 26(c) provides, in relevant part:

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.... If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

Fed. R. Civ. P. 26(c).

As the party seeking the protective order, Plaintiffs have

the burden of demonstrating that "good cause" exists for the protection of the discovery material. Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995); Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994). "Good cause" is established when it is specifically demonstrated that disclosure will cause a clearly defined and serious injury. Glenmede Trust, 56 F.3d at 483. Broad allegations of harm, unsubstantiated by specific examples will not suffice. Id.

Plaintiffs have not met this standard. Plaintiffs maintain that their sources, ex-employees of Aetna, fear reprisals from Aetna if their identities are revealed to Aetna. Plaintiffs have not supplied the Court with any evidence to support these allegations. Plaintiffs have failed to demonstrate that disclosure to Aetna of the names of the sources will result in clearly defined and serious injuries to these individuals. Instead of providing specific evidence, Plaintiffs rely on Aetna's alleged reputation in the industry for "playing 'hardball.'" (Pls.' Mem. at 1.) In support of this contention, Plaintiffs attach copies of newspaper articles concerning business tactics employed by Aetna in connection with lawsuits that have nothing to do with this case. Even if it could be fairly concluded that Aetna's reputation in the health insurance industry is one of playing hardball, there is no evidence before this Court that Aetna ever interfered with a witness in this case

or in any other case. Because Plaintiffs have failed to make a specific showing that Aetna has attempted to intimidate individuals connected with this case or has a history of such intimidation in other cases, the Court finds that Plaintiffs have failed to show that good cause exists for the broad restrictions requested in Plaintiffs' Motion.

An appropriate Order follows.

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**O R D E R**

**AND NOW**, this 26th day of May, 1999, **IT IS HEREBY ORDERED**  
that

1. Defendants' Motion for Sanctions, which was converted by agreement of the parties to a Motion to Compel, (Doc. No. 59) is **GRANTED**. Plaintiffs shall answer Interrogatory Nos. 1 and 2 within five (5) court days of the date of this order.

2. Plaintiffs' Motion for Protective Order (Doc. No. 61) is **DENIED**.

BY THE COURT:

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John R. Padova, J.