

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

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|-------------------------|---|-------------------------|
| DANIEL AHNERT |) | MDL-875 |
| |) | |
| v. |) | PA-ED Case No. 10-67443 |
| |) | |
| CBS CORPORATION, et al. |) | |

ORDER

AND NOW, this 24th day of August, 2012, upon consideration of “CBS Corporation’s Motion for Reconsideration of this Court’s Explanation and Order Dated June 28, 2012” (Doc. No. 153) and Plaintiff’s response (Doc. No. 174), it is hereby **ORDERED** that the motion is **GRANTED**.¹

¹ A Motion for Reconsideration will be granted when the party seeking reconsideration establishes “(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court . . . [issued its previous decision]; or (3) the need to correct a clear error of law or fact or prevent manifest injustice.” *Max’s Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999); *see also North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995).

By our Order of June 28, 2012, we directed CBS to produce “the transcripts of depositions in its or its counsel’s possession pertaining to the six job sites in question and relating to the periods of time within which plaintiff worked at those job sites . . . save those transcripts on the list provided by plaintiff’s counsel.” (Doc. No. 132.) The Order also accounted for certain contingencies. Accepting that a burden was placed upon CBS to produce these transcripts, we deemed the production justified only when Plaintiff was unable to establish that the discovery it sought was not available from a “more convenient source.” (*See Id.* (quoting Fed. R. Civ. P. 26(b)(2)(C)(I))).

Pursuant to our June 28, 2012 Order, Plaintiff provided a list of transcripts in its possession and available from Pohlman USA Court Reporting (“Pohlman”) which concern the six job sites at issue. In light of this new evidence, CBS asks us to reconsider our June 28, 2012 ruling requiring it to search for and produce additional transcripts related to these job sites. We agree with CBS that the list constitutes “new evidence” establishing that Plaintiff has available 558 relevant transcripts. As a result, a review of the burden analysis pitting the possible benefit to Plaintiff of additional transcripts against CBS’s burdens in searching for and producing such transcripts is in order. Fed. R. Civ. P. 26(b)(2)(C)(iii). Ultimately, after re-weighing the burden that such a search would inflict upon CBS against the benefit of additional transcripts for these six job sites above the 558 transcripts already available to Plaintiff, we conclude that a reconsideration of our June 28, 2012 order is appropriate.

Because we previously determined that the information possibly contained in transcripts related to the six job sites and the individuals who worked there was relevant, we concluded that CBS was obligated to produce those transcripts unless the burden of production outweighed the benefit to Plaintiff. At the time of our June 28, 2012 Order, we determined that CBS had failed to established that its burden outweighed Plaintiff’s benefit, but that the balance could shift,

BY THE COURT:

/s/ David R. Strawbridge

DAVID R. STRAWBRIDGE

UNITED STATES MAGISTRATE JUDGE

depending on the amount of relevant transcripts Plaintiff and Pohlman had available. In light of the fact that Plaintiff found 558 relevant transcripts available, CBS asked us to reconsider its burden of production.

We point out that by this Order, we are not reconsidering the decision we made on June 28, 2012 as that determination was made based upon the information before us at that time. Rather we take into account the “new evidence” presented given that the contingencies referred to in the June 28, 2012 Order have been complied with. Accordingly we will subject Plaintiff’s motion to a new burden analysis.

We did not consider the new affidavits attached to CBS’s Motion for Reconsideration since they are not new evidence that could not have been supplied with its original response to Plaintiff’s Motion to Compel. However, we did consider the affidavits attached to CBS’s response to Plaintiff’s Motion to Compel (Doc 115). Although these affidavits suffer from a lack of specificity, in context, we deem the record as a whole to provide sufficient support for this ruling. We conclude that the burden associated with CBS instructing each of its local counsel to search for additional transcripts would outweigh the potential benefit to Plaintiff of any resulting production given the number of relevant transcripts available to Plaintiff, the likelihood of redundant transcripts that would be located by CBS, and the fact that Plaintiff is free to purchase any transcripts from the contracted court reporting services.

Additionally, we note that Plaintiff contends that CBS’s lack of a centralized transcript depository indexed by, *inter alia*, job site, “is intentionally designed to prevent parties from obtaining discoverable information.” (Doc. 174, p. 3 “Response”). Plaintiff provides no evidence to support this contention. We disagree with Plaintiff that CBS’s failure to keep their files centralized and searchable in whatever manner would suit a particular plaintiff amounts to spoliation of evidence and have located no law which would provide otherwise.