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

JOHN J. KORESKO, V and PENNMONT BENEFIT SERVICES, INC.	:	CIVIL ACTION
v.	:	
JEFF BLEIWEIS; RAYMOND ANKNER, CJA AND ASSOCIATES, INC.; and THE TRAVELERS LIFE AND ANNUITY CO.	:	NO. 04-00769

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: January 27, 2005

Plaintiffs have moved for reconsideration of this Court's Order of December 28, 2004, in which I directed the law firm of Koresko & Associates to comply fully with a third-party subpoena served upon it by defendant Travelers Life and Annuity Co. ("TLAC"). As discussed below, I will deny this motion.

I. Legal Standard

The standards controlling a motion for reconsideration are set forth in Federal Rule of Civil Procedure 59(3) and Local Rule of Civil Procedure 7.1. Kostar v. Pepsi-Cola Metropolitan Bottling Company, Inc., Civ. A. No. 96-7130, 1998 WL 848116 at *2 (E.D. Pa. Dec. 4, 1998); Vaidya v. Xerox Corporation, Civ. A. No. 97-547, 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); Kostar, supra.

A motion for reconsideration may not be used to raise new arguments that could have been made in support of the original motion. Balogun v. Alden Park Management Corp., Civ. A. No. 98-0612, 1998 WL 962956 at *1 (E.D. Pa. Oct. 1, 1998); Vaidya, supra at *2.

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 fact or to prevent manifest injustice. Kostar, supra; Vaidya, supra.

II. Discussion

In their motion for reconsideration, Plaintiffs argue that they will suffer manifest injustice if relief is not granted, because (1) the subpoena targets law firm records which contain privileged documents and attorney work product; (2) the subpoena targets "non-responsive and non-targeted" material (I understand this to mean that Plaintiffs claim the subpoena is overly broad); (3) compliance with the subpoena will be unduly burdensome because its wording is vague, because it requests material "which cannot be removed from non-responsive materials without the expenditure of great time, effort, and cost" and because it seeks the deposition of a firm designee. Plaintiffs also maintain that (4) the Court erred as a matter of fact in compelling compliance with a subpoena which was not properly addressed or served.

The first three of these issues are not properly the subject of a motion for reconsideration, if for no other reason than that they were not raised in Plaintiffs' response to the original motion. See, Balogun, supra; Vaidya, supra at *2. Plaintiffs also lack standing to raise the second and third issues. Ordinarily a party lacks standing to seek to quash a subpoena issued to a non-party unless the party claims a right or privilege with regard to the documents sought. Thomas v.

Marina Associates, 202 F.R.D. 433, 434 (E.D. Pa. 2001); 9A Federal Practice and Procedure § 2459 at 41 (2d Ed. 1995). Plaintiffs have gone to great pains to clarify that Koresko & Associates is *not* a party to this action.

As to the first issue, at one time, John Koresko, as an individual plaintiff, may have had the right to file a motion to quash or modify the subpoena, pursuant to Fed. R. Civ. Pr. 45, on the basis of rights he claims in privileged law firm records. However, the time for doing so is long past. Even a *nunc pro tunc* motion, if I were to consider it, could not succeeded unless Plaintiffs first complied with the requirement in Rule 45(d)(2) that they produce a privilege log to TLAC, describing the withheld items in sufficient detail "to enable the demanding party to contest the claim."[1]

Neither will I amend my December 28, 2004, Order on the basis of Plaintiffs' fourth concern. In it, Plaintiffs have simply repeated the facts surrounding the service of TLAC's subpoena, all of which were brought to my attention in original motion.

For the reasons discussed above, I will deny Plaintiffs' motion.

[1]Although the issue of privilege is discussed to some extent in this supposed Motion for Reconsideration, I cannot discern exactly what it is Plaintiffs seek to protect, since, at this point, I lack a privilege log, or any similar description of the withheld material. Plaintiffs have not even admitted that there is any withheld material, but have, instead argued that *if* certain materials exist, they *would be* privileged. For that reason, I have not chosen to construe parts of this Motion for Reconsideration as a Motion to Quash Subpoena.

O R D E R

AND NOW, this 27th day of January, 2005, upon consideration of Plaintiffs' Motion for Reconsideration, docketed in this case as Document No. 84, and Defendant's response thereto, it is hereby ORDERED that Plaintiffs' Motion is DENIED.

BY THE COURT:

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JACOB P. HART
UNITED STATES MAGISTRATE JUDGE